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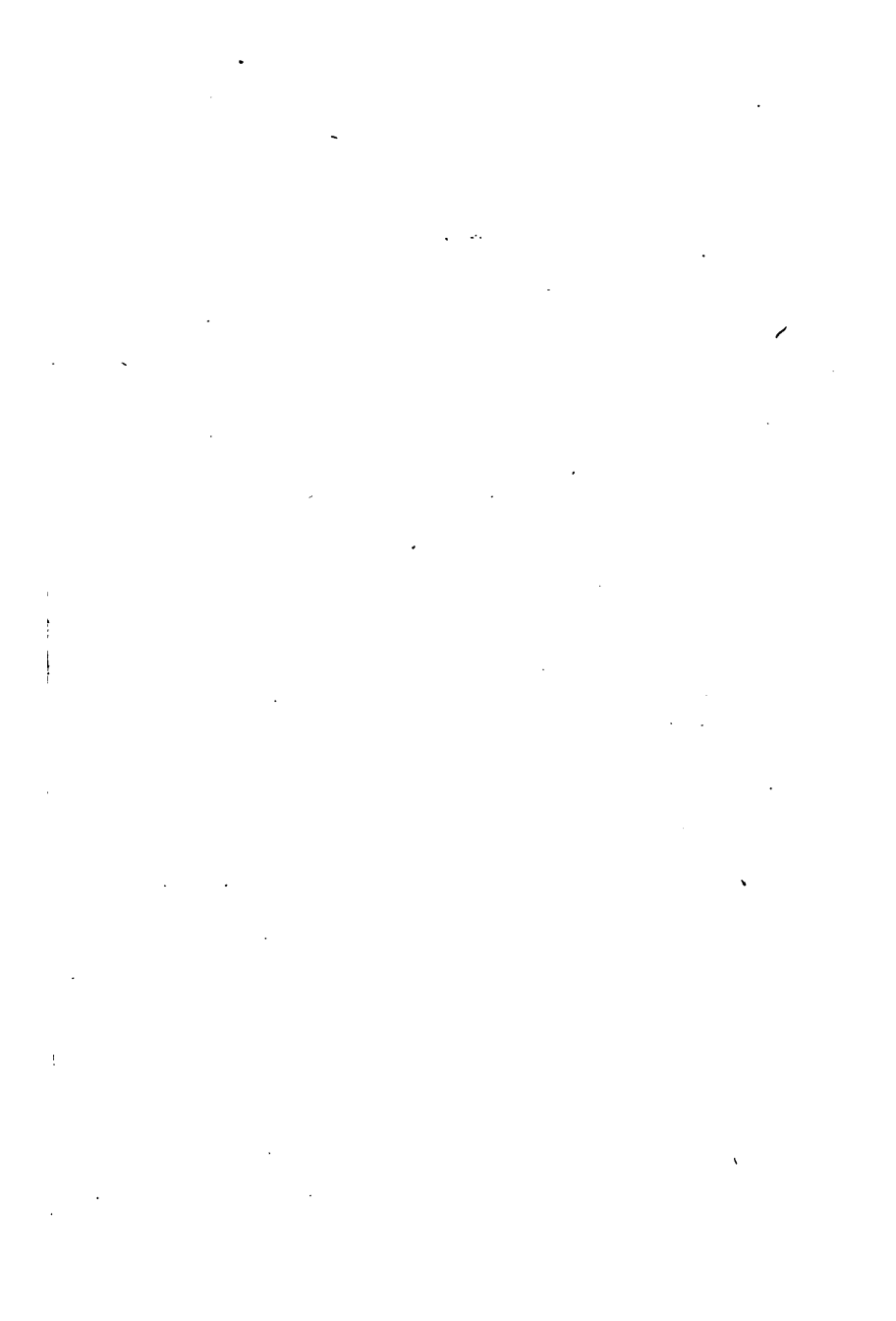
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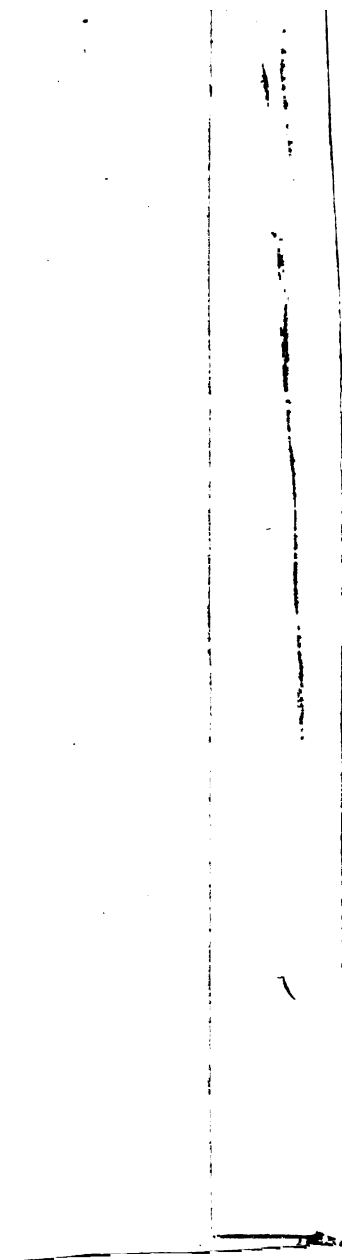
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1905

SUPPLEMENT

TO

California Laws, Statutes, etc. Codes. Civ
DEERING'S
CIVIL CODE *cf*

OF

CALIFORNIA

(Issued in 1903)

THE AMENDMENTS TO THE CIVIL CODE ENACTED AT
THE LEGISLATIVE SESSION OF 1905, WITH CITA-
TIONS OF THE SUPREME COURT OF CALIFORNIA,
FROM VOLUMES 138 TO 145, INCLUSIVE,
OF CALIFORNIA REPORTS

BY

JAMES H. DEERING

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SUPPLEMENT
TO THE
CODES AND STATUTES
OF
CALIFORNIA
WITH CITATIONS OF DECISIONS

CIVIL CODE

§ 4. Supp. Cal. Rep. Cit. 145, 715.

§ 8. En March 21, 1872. Rep. Stats. 1905, 11.

§ 9. **Business days.** All other days than those mentioned in section seven are to be deemed business days for all purposes. En. March 21, 1872. Am'd. 1905, 11.

§ 13. Supp. Cal. Rep. Cit. 145, 84; 145, 409.

§ 14. Supp. Cal. Rep. Cit. 140, 409; 141, 115. Subd. 2—142, 539. Subd. 3—142, 539.

§ 19. Supp. Cal. Rep. Cit. 139, 257; 140, 40.

§ 29. Supp. Cal. Rep. Cit. 159, 483.

§ 38. Supp. Cal. Rep. Cit. 139, 511.

§ 39. Supp. Cal. Rep. Cit. 140, 152.

§ 49. Personal relations forbid. The rights of personal relations forbid:

1. **Abduction.** The abduction of a husband from his wife, or of a parent from his child.

2. **Same.** The abduction or enticement of a wife from her husband, or a child from a parent, or from a guardian entitled to its custody.

3. **Seduction.** The seduction of a wife, daughter, orphan sister, or servant.

4. **Injury to servant.** Any injury to a servant which affects his ability to serve his master. En. March 21, 1872. Am'd. 1905, 68.

§ 51. Personal rights, all persons have equal. All citizens within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities, and privileges of inns, restaurants, hotels, eating houses, barber shops, bath houses, theaters, skating rinks, and all other places of public accommodation or amusement, subject only to the conditions and limitations established by law and applicable alike to all citizens. En. Stats. 1905, 553.

51, 52. The statute of 1897, page 137, relating to the rights of persons, is codified in the two sections above named.—Code Commissioner's Note.

§ 52. Violation of preceding provisions; damages. Whoever violates any of the provisions of the last preceding section, by denying to any citizen, except for reasons applicable alike to every race or color, the full accommodations, advantages, facilities, and privileges in said section enumerated, or by aiding or inciting such denial, or whoever makes any discrimination, distinction, or restriction on account of color or race, or except for good cause, applicable alike to all citizens of every color or race whatever, in respect to the admission of any citizen to, or his treatment in, any inn, hotel, restaurant, eating house, barber shop, bath house, theater, skating rink, or other public place of amusement or accommodation, whether such place is licensed or not, or whoever aids or incites such discrimination, distinction, or restriction, for each and every such offense is liable in damages in an amount not less than fifty dollars, which may be recovered in an action at law brought for that purpose. En. Stats. 1905, 553.

See note to § 51, ante.

§ 53. Admittance to places of amusement, etc., on presentation of ticket, or price of ticket; exceptions. It is unlawful for any corporation, person, or association, or the proprietor, lessee, or the agents of either, of any opera house, theater, melodeon, museum, circus, caravan, race course, fair, or other place of public amusement or entertainment, to refuse admittance to any person over the age of twenty-one years, who presents a ticket of admission acquired by purchase, or who tenders the price thereof for such ticket, and who demands admission to such place. Any person under the influence of liquor, or who is guilty of boisterous conduct, or any person of lewd or immoral character, may be excluded from any such place of amusement. En. Stats. 1905, 554.

53, 54. The statute of 1893, page 220, relating to the rights of persons, is codified in the sections above named.—Code Commissioner's Note.

§ 54. Violation of preceding provisions; damages. Any person who is refused admission to any place of amusement contrary to the provisions of the last preceding section, is entitled to recover from the proprietor, lessee, or their agents, or from any such person, corporation, or association, or the directors thereof, his actual damages, and one hundred dollars in addition thereto. En. Stats. 1905, 554.

See note to § 53, ante.

§ 58. En. March 21, 1872. Am'd. 1873-4, 185. Rep. 1905, 554.

Supp. Cal. Rep. Cit. 158, 549.

58. The provisions of this section are contained in the present section 82. The section is therefore unnecessary.—Code Commissioner's Note.

§ 60. Marriages, illegal. All marriages of white persons with negroes, Mongolians, or mulattoes are illegal and void. En. March 21, 1872. Am'd. 1905, 554.

60. The change consists in the insertion of the word "mongolians" after the word "negroes."—Code Commissioner's Note.

§ 61. Supp. Cal. Rep. Cit. 139, 632; 140, 248; 140, 249; 140, 485; 140, 488. Subd. 2—140, 247.

§ 68. **Marriages, procedure required.** Marriage must be licensed, solemnized, authenticated, and recorded as provided in this article; but noncompliance with its provisions by others than a party to a marriage does not invalidate it. En. March 21, 1872. Am'd. 1895, 121; 1905, 554.

68. The change consists in the substitution of the word "others" for "other" before "than"; the substitution of "a party" for "the parties" after "than"; and the substitution of "it" for "that marriage" after "invalidate." The meaning of the section is unchanged.—Code Commissioner's Note.

§ 69. **Marriage licenses.** All persons about to be joined in marriage must first obtain a license therefor from the county clerk of the county in which the marriage is to be celebrated, and must upon oath qualify and show as follows:

1. The identity of the parties;
2. Their real and full names and places of residence;
3. Their ages;
4. No license must be granted when either of the parties applicants therefor is an imbecile or insane, or who at the time of making application for said license is under the influence of any intoxicating liquor, or narcotic drug;
5. No license must be issued authorizing the marriage of a white person with a negro, mulatto, or mongolian;
6. If the male is under the age of twenty-one, or the female under the age of eighteen years, the consent of the father, mother or guardian, if such consent is given; or that such non-age person has been previously, but is not at the time married.

If the male is under the age of twenty-one, or the female under the age of eighteen years, and such person has not been previously married, no license must be issued by the clerk, unless the consent in writing of the parents of the person under age, or one of such parents, or of his or her guardian is presented to him duly verified by such parents or parent or guardian; and such consent must be filed by the clerk and he must state such facts in the license. For the purpose of ascertaining all the facts mentioned and required in this section, the clerk must at the time the license is applied for examine the parties to whom the license is to be issued under oath and reduce such examination to writing to be by them subscribed. En. March 21, 1872. Am'd. 1873-4, 185; 1880, 3; 1905, 182.

§ 70. Supp. Cal. Rep. Cit. 140, 221.

§ 79a. Not applicable to members of particular religious denomination. The provisions of this chapter, so far as they relate to the solemnizing of marriages, are not applicable to members of any particular religious denomination having, as such, any peculiar mode of entering the marriage relation; but such marriages must be declared, as provided in section seventy-six, and be acknowledged and recorded, as provided in section seventy-seven. Where a marriage is declared as provided in said section seventy-six, the husband must file said declaration with the county recorder within thirty days after such marriage, and upon receiving the same the county recorder must record the same; and if the husband fails to make such declaration and file the same for record, as herein provided, he is liable to the same penalties as any person authorized to solemnize marriages, who fails to make the return of such solemnization as provided by law. En. Stats. 1897, 186. Am'd. 1905, 555.

79a (79½). The change consists in the omission of the words "procuring a license and," after "to," thus requiring a license in every case, but leaving the mode of celebrating the marriage as at present. The section is renumbered 79a.—Code Commissioner's Note.

§ 84. Children of annulled marriages. A judgment of nullity of marriage does not affect the legitimacy of children begotten before the judgment. En. March 21, 1872. Am'd. 1905, 555.

84. The design of the amendment is to make the rule declared in this section applicable to all judgments adjudging marriage null, the present section applying only to cases where a marriage is annulled on the ground that a former husband or wife was living.—Code Commissioner's Note.

§ 91. Supp. Cal. Rep. Cit. 140, 488.

§ 94. Divorce, extreme cruelty cause of action for. Extreme cruelty is the wrongful infliction of grievous bodily injury, or grievous mental suffering, upon the other by one party to the marriage. En. March 21, 1872. Am'd. 1905, 75.

§ 95. Supp. Cal. Rep. Cit. 142, 523.

§ 96. Supp. Cal. Rep. Cit. 144, 627.

§ 99. Supp. Cal. Rep. Cit. 140, 115.

§ 101. Supp. Cal. Rep. Cit. 140, 115; 140, 117; 140, 125.

§ 124. Supp. Cal. Rep. Cit. 140, 118. Subd. 3—140, 117.

§ 125. Supp. Cal. Rep. Cit. 140, 118.

§ 128. Supp. Cal. Rep. Cit. 140, 483.

§ 130. Supp. Cal. Rep. Cit. 140, 119; 140, 483; 145, 787.

§ 131. Supp. Cal. Rep. Cit. 140, 479; 140, 480; 140, 488;
143, 631.

§ 132. Supp. Cal. Rep. Cit. 140, 480; 140, 488; 143, 631.

§ 136. **Divorce, maintenance by husband where judgment is denied.** Though judgment of divorce is denied, the court may, in an action for divorce, provide for the maintenance by the husband, of the wife and children of the marriage, or any of them. En. March 21, 1872. Am'd. 1905, 634.

§ 137. **Alimony to be paid while action is pending; action for support.** When an action for divorce is pending, the court may, in its discretion, require the husband to pay as alimony any money necessary to enable the wife to support herself and her children, or to prosecute or defend the action. When the wife has any cause of action for divorce as provided in section ninety-two of this code, she may, without applying for a divorce, maintain in the superior court an action against him for permanent support and maintenance of herself or of herself and children. During the pendency of such action the court may, in its discretion, require the husband to pay as alimony any money necessary for the prosecution of the action and for support and maintenance, and execution may issue therefor in the discretion of the court. The final judgment in such action may be enforced by the court by such order or orders as in its discretion it may from time to time deem necessary, and such order or orders may be varied, altered, or revoked

at the discretion of the court. En. March 21, 1872. Am'd. 1877-8, 76; 1880, 4; 1905, 205.

Supp. Cal. Rep. Cit. 143, 633; 144, 326.

§ 138. **Custody and maintenance of minors during actions for divorce.** In actions for divorce the court may, during the pendency of the action, or at the final hearing or at any time thereafter during the minority of any of the children of the marriage, make such order for the custody, care, education, maintenance and support of such minor children as may seem necessary or proper, and may at any time modify or vacate the same. En. March 21, 1872. Am'd. 1905, 43.

§ 139. Supp. Cal. Rep. Cit. 144, 326.

§ 140. Supp. Cal. Rep. Cit. 144, 325; 144, 326.

§ 158. Supp. Cal. Rep. Cit. 139, 253; 142, 124; 143, 643; 145, 599.

§ 159. Supp. Cal. Rep. Cit. 145, 599.

§ 161. Supp. Cal. Rep. Cit. 139, 560; 145, 480.

§ 162. Supp. Cal. Rep. Cit. 143, 295.

§ 163. Supp. Cal. Rep. Cit. 142, 5; 142, 6.

§ 164. Supp. Cal. Rep. Cit. 138, 572; 142, 121; 143, 295; 143, 647.

§ 171. **Separate property of wife liable for own debts and for necessities of life.** The separate property of the wife is liable for her own debts contracted before or after her marriage, but is not liable for her husbands debts; *provided*, that such property is liable for the payment of debts contracted by the husband or wife for the necessities of life furnished to them or either of them while they are living together. *Provided* that the provisions of this act shall not apply to the separate property of the wife held by her at the time of her marriage or acquired by her by devise or succession after marriage. En. March 21, 1872. Am'd. 1905, 206.

§ 172. Supp. Cal. Rep. Cit. 139, 563; 142, 522; 145, 599.

§ 193. Supp. Cal. Rep. Cit. 145, 715.

§ 196. Supp. Cal. Rep. Cit. 145, 716.

§ 197. Supp. Cal. Rep. Cit. 142, 426.

§ 198. Supp. Cal. Rep. Cit. 142, 426.

§ 203. Supp. Cal. Rep. Cit. 143, 404; 143, 405.

§ 204. Supp. Cal. Rep. Cit. 142, 426; 143, 403.

§ 207. Supp. Cal. Rep. Cit. 145, 716; 145, 717.

§ 226. Adoption of child, petition; consent of residents necessary; consent of nonresidents. Any person desiring to adopt a child may, for that purpose, petition the superior court of the county in which the petitioner resides. The person adopting a child, and the child adopted, and the other persons, if within or residents of this state, whose consent is necessary, must appear before the court, and the necessary consent must thereupon be signed and an agreement executed by the person adopting, to the effect that the child shall be adopted and treated in all respects as his own lawful child should be treated. If the persons whose consent is necessary are not within or are not residents of this state, then their written consent, duly proved or acknowledged, according to sections eleven hundred and eighty-two and eleven hundred and eighty-three, must be filed in said superior court at the time of the application for adoption. En. March 21, 1872. Am'd. 1875-6, 69; 1880, 4; 1905, 555.

226. The first two sentences of this section have been recast with the design of making the proceeding for adoption judicial, thereby supporting it by the same intendments which are indulged in favor of other proceedings conducted in courts of record.—Code Commissioner's Note.

§ 227. Judge's order; petition, order, etc., where filed. The court must examine all persons appearing before it pursuant to the last section, each separately, and if satisfied that the interests of the child will be promoted by the adoption, it must make an order declaring that the child shall

thenceforth be regarded and treated in all respects as the child of the person adopting. The petition, agreement, consent, and order must be filed and registered in the office of the county clerk in the same manner as papers in other special proceedings. En. March 21, 1872. Am'd. 1905, 556.

Supp. Cal. Rep. Cit. 140, 469; 141, 406.

227. The change consists in the substitution of the word "court" for the word "judge," and in the addition of the last sentence, said sentence being added for the purpose of making it clear that the papers constituting part of the adoption, or of the proceeding therefor, must be filed and preserved by the clerk.—Code Commissioner's Note.

§ 228. Supp. Cal. Rep. Cit. 140, 469.

§ 230. Supp. Cal. Rep. Cit. 142, 160; 142, 168; 142, 169; 142, 170; 142, 171; 142, 172.

§ 242. En. March 21, 1872. Rep. 1905, 728.

242, 243, 244, 245. The provisions of the above sections, relating to guardian and ward, are controlled by sections 1747, 1758, and 1793 of the Code of Civil Procedure. They are, therefore, unnecessary and misleading.—Code Commissioner's Note.

§ 243. En. March 21, 1872. Am'd. 1873-4, 196; 1880, 4. Rep. 1905, 728.

See note to § 242, ante.

§ 244. En. March 21, 1872. Am'd. 1880, 4. Rep. 1905, 728.

See note to § 242, ante.

§ 245. En. March 21, 1872. Rep. 1905, 728.

See note to § 242, ante.

§ 246. Rules for awarding custody of minor. In awarding the custody of a minor, or in appointing a general guardian, the court or officer is to be guided by the following considerations:

1. By what appears to be for the best interest of the child in respect to its temporal and its mental and moral welfare; and if the child is of a sufficient age to form an intelligent preference, the court may consider that preference in determining the question;

2. As between parents adversely claiming the custody or guardianship, neither parent is entitled to it as of right; but other things being equal, if the child is of tender years, it should be given to the mother; if it is of an age to require education and preparation for labor and business, then to the father;

3. Of two persons equally entitled to the custody in other respects, preference is to be given as follows:

(1) To a parent;

(2) To one who was indicated by the wishes of a deceased parent;

(3) To one who already stands in the position of a trustee of a fund to be applied to the child's support;

(4) To a relative.

4. Any parent who knowingly or willfully abandons, or having the ability so to do, fails to maintain his minor child under the age of fourteen years, forfeits the guardianship of such child; and any parent or guardian who knowingly permits his child or ward to remain for the space of one year in any orphan asylum of this state, wherein such child is supported by charity, and who, during such period, fails to give notice in writing to the managers or officers of such asylum that he is such parent or guardian, abandons and forever forfeits all right to the guardianship, care, custody, and control of such child. The officers and managers of any orphan asylum having any such abandoned child in its care have the preferred right to the guardianship of such child. En. March 21, 1872. Am'd. 1873-4, 196; 1905, 728.

Supp. Cal. Rep. Cit. 142, 246.

246. The change consists in the addition of subdivision 4, which is a codification of the statute of 1873-4, page 297, relating to the care of orphan and abandoned children. The penal provisions of that act are, however, omitted as they do not properly find a place in this Code.—Code Commissioner's Note.

§ 247. En. March 21, 1872. Rep. 1905, 729.

Supp. Cal. Rep. Cit. 143, 403.

247. The subject matter of this section is provided for in section 1753 of the Code of Civil Procedure.—Code Commissioner's Note.

§ 248. En. March 21, 1872. Rep. 1905, 729.

Supp. Cal. Rep. Cit. 142, 426; 143, 403.

248, 249. The provisions of these sections are included in sections 1753 and 1770 of the Code of Civil Procedure.—Code Commissioner's Note.

§ 249. En. March 21, 1872. Am'd. 1873-4, 197; 1880, 5. Rep. 1905, 729.

See note to § 248, ante.

§ 253. Supp. Cal. Rep. Cit. Subd. 8—143, 409.

§ 255. Supp. Cal. Rep. Cit. Subd. 2—143, 230. Subd. 3—143, 234.

§ 256. Supp. Cal. Rep. Cit. 143, 229.

§ 257. Supp. Cal. Rep. Cit. 143, 229; 143, 234.

§ 258. En. March 21, 1872. Am'd. 1880, 5. Rep. 1905, 729.

258. This section, which prescribed the mode of placing insane persons in the asylum, has been supplanted by later legislation (see statute of 1897, page 311, relative to the establishment of a lunacy commission, and Political Code, sections 2186 to 2199).—Code Commissioner's Note.

PART III.

TITLE IV.

Title repealed and new title substituted March 21, 1905.
Stats. 1905, 560.

MASTER AND APPRENTICE.

§ 264. Minors, when and to whom may be bound as apprentices.

§ 265. Persons who may bind minor with his consent.

§ 266. Indenture of apprenticeship, how to be executed and what to contain.

§ 267. Jury trial as to facts of incapacity, etc., of parent.

- § 268. Apprenticing of poor and homeless minors.
- § 269. Master to keep apprentice within the state, to deliver him money and other property therein.
- § 270. Duty to inquire into the treatment of minor apprentices.
- § 271. Hearing of complaints of apprentices.
- § 272. Power of court to discharge apprentice from apprenticeship.
- § 273. Liability of master for breach of his covenant.
- § 274. Liability of, and proceedings against, apprentice guilty of gross misbehavior.
- § 275. Enticing away apprentices and liability for.
- § 276. Release of master removing out of state or quitting business.

§ 264. Minors, when and to whom may be bound as apprentices. Every minor of the age of fourteen years or upwards may be bound by indenture as an apprentice to any mechanical trade or art or the occupation of farming to the age of eighteen years, if a female, or to the age of twenty-one years, if a male. En. March 21, 1872. Rep. 1905, 560. En. 1905, 560.

264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276. These sections codify the statute of 1875-6, page 842, relative to masters and apprentices, as amended in 1880, page 28, the old chapter being repealed and the provisions of the acts above referred to substituted in place thereof. In this codification section 1 of the statute has been made section 264; sections 2 and 7, 265; sections 3, 4, 5, and 12, 266; section 6, 267; section 8 and the latter part of section 9, 268; the first clause of section 9 and all of section 10, 269; section 11, 270; section 13, 271; section 14, 272; section 15, 273; sections 16 and 17, 274; section 19, 275; section 20, 276. It will be observed that section 18 of the statute has been omitted. It purports to make the parties to an indenture of apprenticeship liable to the master for any breach thereof. The theory of the statute is that the contract of apprenticeship is not made by the minor, but by his parent or guardian. If such parent or guardian is made personally liable on the contract, a parent will rarely, and the guardian almost never, enter into it. It seems sufficient that such parent or guardian be made answerable for the cost of the proceeding brought by the master to be released from the indenture, as provided for in section 274. The master on his part is not absolutely bound, because he may, if he wishes to remove from the state, or to quit his trade or business, apply to be released from his contract, and he may take like action whenever the apprentice is guilty of neglect, refusal to do his duty, or gross misbehavior. These considerations seem to furnish good reason for the omission of the section.—Code Commissioner's Note.

§ 265. Persons who may bind minor with his consent. A minor, with his consent, may be bound by his father, or, in case of his death or incompetency, or where he has willfully abandoned his family for one year without making suitable provision for their support, or is habitually intemperate in the use of intoxicants, or is a vagrant, then by his mother or legal guardian. An executor, who, by the will of the father, is directed to bring up a child to a trade or calling, has power to bind by indenture in like manner as the father might have done, if living. If a child is illegitimate, the mother alone has power to bind him. If a minor has no parent or guardian competent to act for him, he may bind himself, with the approval of the superior court of the county wherein he resides. If the mother of a minor, whether legitimate or illegitimate, marries after his birth, she cannot bind him without the approval of such superior court. En. March 21, 1872. Am'd. 1880, 5. Rep. 1905, 560. En. 1905, 561.

See note to § 264, ante.

§ 266. Indenture of apprenticeship, how to be executed and what to contain. Every indenture of apprenticeship must be executed in duplicate, must state the age of the minor, and, except as hereinafter provided, must show that he consented thereto, must be signed by him and the person binding and the master, and when made with the approval of the superior court, a certified copy of the order of approval must be attached to the indenture. One copy of the indenture must be delivered to the master and the other kept for the use of the minor by his parent or guardian when executed by him, or, when made with the approval of the court, it must be filed and deposited with the clerk for safekeeping for the use of the minor. No indenture binds the minor after the death of the master, but thereafter the minor may be bound anew. Every indenture entered into otherwise than as herein provided is, as against the apprentice, absolutely void. En. March 21, 1872. Rep. 1905, 560. En. 1905, 561.

See note to § 264, ante.

§ 267. Jury trial as to facts of incapacity, etc., of parent. Facts of incapacity, desertion, habitual intemperance, and vagrancy must be decided in said court by a jury, before

the indenture can take effect, and an indorsement on the indenture, under seal of the court, that the charge or charges are proved, is sufficient evidence of the mother's power to give such consent; but if the jury does not find the charge or charges to be true, the person at whose instance such proceedings may have been had must pay all costs attending the same. En. March 21, 1872. Rep. 1905, 560. En. 1905, 561.

See note to § 264, ante.

§ 268. **Apprenticing of poor and homeless minors.** When a minor is poor, homeless, chargeable to the county or state, or an outcast who has no visible means of obtaining an honest livelihood, the superior court may, with his consent, bind him as an apprentice during his minority. Proceedings therefor may be instituted by any citizen, and no fee must be charged by any officer for any act in connection therewith. In all indentures by the court for binding out an orphan or homeless minor as an apprentice there must be inserted, among other things, a clause to the following effect: that the master to whom such minor is bound must cause him to be taught to read and write and the ground rules of arithmetic, ratio and proportion, and must give him the requisite instruction in the different branches of his trade or calling, and, at the expiration of his term of service, must give him or her fifty dollars in gold, and two whole new suits of clothes, to be worth in the aggregate at least sixty dollars gold. En. March 21, 1872. Rep. 1905, 560. En. 1905, 561.

See note to § 264, ante.

§ 269. **Master to keep apprentice within the state, to deliver him money and other property therein.** A master must not remove his apprentice out of the state, and must pay and deliver to him the money, clothes, and other property to which he is entitled under the indenture of apprenticeship, to be held by him as his sole property. En. March 21, 1872. Rep. 1905, 560. En. 1905, 562.

See note to § 264, ante.

§ 270. **Duty to inquire into the treatment of minor apprentices.** Parents and guardians and such court must, from time to time, inquire into the treatment of children bound by them respectively, or with their approval, and the judges

of such courts are responsible for the charge of apprentices bound by a court or with its approval, and must defend them from all cruelty, neglect, breach of contract, or misconduct on the part of their masters. En. March 21, 1872. Rep. 1905, 560. En. 1905, 562.

See note to § 264, ante.

§ 271. **Hearing of complaints of apprentices.** The superior court must hear the complaints of apprentices who reside within the county against their masters, alleging undeserved or immoderate correction, insufficient allowance of food, raiment, or lodging, want of instruction in the different branches of their trade or calling, or that they are in danger of being removed out of the state, or any violation of the indenture of apprenticeship, and the court must hear and determine such case and make such order therein as will relieve the party in the future. En. March 21, 1872. Rep. 1905, 560. En. 1905, 562.

See note to § 264, ante.

§ 272. **Power of court to discharge apprentice from apprenticeship.** The superior court has power, where circumstances require it, to discharge an apprentice from his apprenticeship, and, in case any money or other thing has been paid or contracted to be paid by either party in relation to the apprenticeship, the court must make such order concerning the same as seems just and reasonable. If the apprentice so discharged was originally bound by the superior court, it must, if found necessary, again bind such minor, if under age. En. March 21, 1872. Rep. 1905, 560. En. 1905, 562.

See note to § 264, ante.

§ 273. **Liability of master for breach of his covenant.** Every master is liable to an action on the indenture for a breach of any covenant thereof on his part. All damages recovered in such action, after deducting necessary charges in its prosecution, belong to the minor, and must be applied and appropriated to his use by the person recovering it in his behalf, and must be paid to the minor, if a male, at the age of twenty-one years, and if a female, at the age of eighteen years. If no action is brought during the minority of the apprentice, it may be commenced by him in his own

name at any time within two years after his coming of age. En. March 21, 1872. Am'd. 1880, 6. Rep. 1905, 560. En. 1905, 562.

See note to § 264, ante.

§ 274. **Liability of, and proceedings against, apprentice guilty of gross misbehavior.** An apprentice who is guilty of any gross misbehavior, or refusal to do his duty, or willful neglect thereof, is liable to the complaint of his master in the superior court of the county wherein the apprentice resides. Such complaint must set forth the circumstances of the case, and have attached thereto a citation, signed by the clerk of the court, requiring him and all persons who have covenanted in his behalf to appear and answer the complaint within ten days after the service thereof. The complaint and citation must be served in the manner required for serving civil process. When the parties have answered, or when, though they have not answered, the time therefor allowed after the service of the complaint has expired, the court must proceed to hear and determine the cause, and, if the evidence warrants it, may render judgment that the master be discharged from the contract of apprenticeship and for costs of suit. Such costs may be recovered from the parent or guardian of the minor, if there is any who signed the indenture, and execution therefor may issue accordingly. If there is no parent or guardian liable for such cost, execution may be issued therefor against the minor, or the amount thereof may be recovered in an action against him after he arrives at full age. He is also liable to the master in an action on the indenture for the breach of any covenant on the part of the apprentice contained therein, committed before the master was discharged from the indenture. En. March 21, 1872. Rep. 1905, 560. En. 1905, 562.

See note to § 264, ante.

§ 275. **Enticing away apprentices and liability for.** It is unlawful for any person to entice, counsel, or persuade to run away any apprentice, or to harbor, or conceal him, knowing him to be a runaway. Any party so offending is guilty of a misdemeanor, and may be fined not more than one hundred dollars, to be recovered by the master in any court having jurisdiction. En. March 21, 1872. Rep. 1905, 560. En. 1905, 563.

See note to § 264, ante.

§ 276. **Release of master removing out of state or quitting business.** Whenever any master wishes to remove out of the state, or to quit his trade or business, he must appear with his apprentice before the superior court of the county in which the latter resides, and if the court is satisfied that the master has done justice to the apprentice for the time he has had charge of him, the court has power to discharge the master from the indenture and to again bind the apprentice, if necessary. En. March 21, 1872. Rep. 1905, 560. En. 1905, 563.

See note to § 264, ante.

§ 284. Supp. Cal. Rep. Cit. 144, 334.

§ 285. **Corporations, how formed.** Private corporations may be formed by the voluntary association of any three or more persons in the manner prescribed in this article. A majority of such persons must be residents of this state. En. March 21, 1872. Am'd. 1873-4, 197; 1905, 502.

§ 286. Supp. Cal. Rep. Cit. 144, 594.

§ 290. **Articles must set forth.** Articles of incorporation must be prepared, setting forth:

1. **Name.** The name of the incorporation.
2. **Purposes.** The purpose for which it is formed.
3. **Place of business.** The place where its principal business is to be transacted.
4. **Term of existence.** The term for which it is to exist, not exceeding fifty years.
5. **Number of directors.** The number of its directors or trustees, which shall not be less than three, and the names and residence of those who are appointed for the first year; *provided*, that the corporate powers, business, and property of corporations formed, or to be formed for the purpose of erecting and managing halls and buildings for the meetings and accommodations of several lodges or societies of any benevolent or charitable order or organization, and in connection therewith the leasing of stores and offices in such building or buildings for other purposes, may be conducted, exercised, and controlled by a board of not less than three or more than fifty directors, to be chosen from among the stockholders of such corporation, or among the members of such order or organi-

zation; *and provided, also*, that at any time during the existence of corporations for profit, other than those of the character last hereinabove provided for, the numbers of the directors may be increased or diminished, by a majority of the stockholders of the corporation, to any number not less than three, who must be members of the corporation; whereupon a certificate stating the number of directors must be filed, as provided for in section two hundred and ninety-six for the filing of the original articles of incorporation; *and provided, also*, that the corporate powers, business and property of corporations formed or to be formed for social purposes, and not directly for profit, may be exercised, conducted, and controlled by a board, consisting of such number of directors as may be in the constitution or by-laws provided; and corporations so formed may, in their constitution or by-laws, provide for the length of time that the directors, or any number thereof, shall act, and may, in like manner provide that certain directors, or a certain number of the board of directors, to be selected by the corporation or the board of directors, in the mode and manner provided in the constitution or by-laws, shall act for any specified length of time, or otherwise, as shall be in the constitution or by-laws set forth.

6. **Capital stock.** The amount of its capital stock, and the number of shares into which it is divided.

7. **Capital stock subscribed.** If there is a capital stock, the amount actually subscribed, and by whom. En. March 21, 1872. Am'd. 1873-4, 199; 1875-6, 70; 1880, 11; 1891, 285; 1900-01, 322; 1905, 502.

§ 290½. **Corporations not to use the word "trust" as part of corporate name.** No corporation hereafter formed shall use the word "trust" or "trustee" as a part of its corporate name unless it shall be authorized by its articles of incorporation to act as executor, administrator, guardian, assignee, receiver, depository or trustee, nor shall any corporation hereafter formed accept or execute any trust unless it shall have complied with all the provisions of "An act authorizing certain corporations to act as executor, and in other capacities, and to provide for and regulate the administration of trusts by such corporation," approved April 6th, 1891, and the amendment thereto approved, April 1st, 1897. En. Stats. 1905, 251.

§ 291. Supp. Cal. Rep. Cit. 142, 227.

§ 292. **Articles subscribed and acknowledged.** The articles of incorporation must be subscribed by three or more persons, a majority of whom must be residents of this state, and acknowledged by each before some officer authorized to take and certify acknowledgments or conveyances of real property. En. March 21, 1872. Am'd. 1873-4, 199; 1905, 503.

§ 296. Supp. Cal. Rep. Cit. 142, 281.

§ 299. **Corporations holding property in any county other than where original articles are filed, must file certified articles with county clerk.** No corporation hereafter formed must purchase, locate, or hold property, in any county in this state, other than the county in which its original articles of incorporation are filed, without filing a copy of the copy of its articles of incorporation filed in the office of the secretary of state, duly certified by such secretary of state, in the office of the county clerk of the county in which such property is situated, within sixty days after such purchase or location is made. Every corporation now in existence, whether formed under the provisions of this code or not, must, within ninety days after the passage of this section, file such certified copy of the copy of its articles of incorporation in the office of the county clerk of every county in this state in which it holds any property, except the county where the original articles of incorporation are filed; and if any corporation hereafter acquires any property in a county other than that in which it now holds property, it must, within ninety days thereafter, file with the clerk of such county such certified copy of the copy of its articles of incorporation. The copies filed with the several county clerks, and certified copies thereof, have the same force and effect in evidence as the originals. Any corporation failing to comply with the provisions of this section cannot maintain or defend any action or proceeding in relation to such property, its rents, issues, or profits, until such articles of incorporation, and such certified copy of its articles of incorporation, and such certified copy of the copy of its articles of incorporation, are filed at the places directed by the general law and this section; *provided*, that all corporations are lia-

ble in damages for any and all loss that may arise by the failure of such corporation to perform any of the foregoing duties within the time mentioned in this section; *and provided further*, that the said damages may be recovered in an action brought in any court of this state of competent jurisdiction, by any party or parties suffering the same. En. March 21, 1872. Rep. 1873-4, 200. En. Stats. 1875-6, 71. Am'd. 1877-8, 76; 1880, 13; 1905, 556.

299. The change consists in the insertion of the words "other than the county in which its original articles of incorporation are filed" after "state."—Code Commissioner's Note.

§ 301. Supp. Cal. Rep. Cit. 145, 702.

§ 302. **Election of directors; notice of.** The directors of a corporation must be elected annually by the stockholders or members, and if no provision is made in the by-laws for the time of election, the election must be held on the first Tuesday in June. Notice of such election must be given as prescribed in section three hundred and one. En. March 21, 1872. Am'd. 1905, 557.

302. The change consists in the omission of the words "and the right to vote determined" after "given." The right to vote is controlled by section 307.—Code Commissioner's Note.

§ 304. **By-laws.** All by-laws adopted must be certified by a majority of the directors and secretary of the corporation, and copied in a legible hand, in some book kept in the office of the corporation, to be known as the "book of by-laws," and the book must then be open to the inspection of the public during office hours each day except holidays. The by-laws may be repealed or amended, or new by-laws may be adopted, at the annual meeting, or at any other meeting of the stockholders or members, called for that purpose by the directors, by a vote representing two thirds of the subscribed stock, or by two thirds of the members. The written assent of the holders of two thirds of the stock, or two thirds of the members if there is no capital stock, is effectual to repeal or amend any by-law, or to adopt additional by-laws. The power to repeal and amend the by-laws, and adopt new by-laws, may, by a similar vote at any such meeting, or similar written assent, be delegated to the board of directors. The power, when delegated, may be re-

voked by a similar vote, at any regular meeting of the stockholders or members. Whenever any amendment or new by-law is adopted, it must be copied in the book of by-laws with the original by-laws, and immediately after them. If any by-law is repealed, the fact of repeal, with the date of the meeting at which the repeal was enacted, or written assent was filed, must be stated in said book. Until copied or stated as hereinbefore required, no by-law, nor any amendment or repeal thereof, can be enforced against any person, other than the corporation, not having actual notice thereof. En. March 21, 1872. Am'd. 1873-4, 201; 1885, 130; 1905, 557.

304. The provisions of the present section, declaring that no by-law or any amendment thereof shall take effect until copied in the book of by-laws, is amended so as to permit by-laws and amendments thereof, which have been duly passed, to be treated as valid and enforceable against the corporation and persons having notice thereof, regardless of whether or not they have been copied into the proper book. It has often happened that by-laws have been published and generally acted upon by the corporation, and by others, and then their effect has been sought to be avoided on account of the failure of the proper officer to perform his duty of copying them as the Code directs. The change consists in the addition of the last sentence.—Code Commissioner's Note.

§ 305. Corporate powers to be exercised by board of directors; directors, qualifications of; quorum; vacancies. The corporate powers, business and property of all corporations formed under this title must be exercised, conducted, and controlled by a board of not less than three directors, to be elected from among the holders of stock; or where there is no capital stock, then from the members of such corporations; except that corporations formed or to be formed for the purpose of erecting and managing halls and buildings for the meetings and accommodation of several lodges or societies of any benevolent or charitable order or organization, and in connection therewith, the leasing of stores and offices in such building or buildings for other purposes, the corporate powers, business, and property thereof may be conducted, exercised, and controlled by a board not less than three or more than fifty directors, to be chosen from among the stockholders of such corporation or from among the members of such order or organization. A majority of the directors must be in all cases residents of this state. Directors of corporations for profit must be holders of stock therein to an amount

to be fixed by the by-laws of the corporation. Directors of all other corporations must be members thereof. Unless a quorum is present and acting no business performed or act done is valid as against the corporation. Whenever a vacancy occurs in the office of director, unless the by-laws of the corporation otherwise provide, such vacancy must be filled by an appointee of the board. En. March 21, 1872. Am'd. 1875-6, 71; 1900-01, 308; 1905, 503.

§ 308. Supp. Cal. Rep. Cit. 145, 364.

§ 309. Dividends; limit as to debt; withdrawal; increase or decrease of capital stock. The directors of corporations must not make dividends, except from the surplus profits arising from the business thereof; nor must they create any debts beyond their subscribed capital stock; nor must they divide, withdraw, or pay to the stockholders, or any of them, any part of the capital stock, except as hereinafter provided, nor reduce or increase the capital stock, except as herein specially provided. For a violation of the provisions of this section, the directors under whose administration the same may have happened (except those who may have caused their dissent therefrom to be entered at large on the minutes of the directors at the time, or were not present when the same did happen) are, in their individual or private capacity, jointly and severally liable to the corporation, and to the creditors thereof, to the full amount of the capital stock so divided, withdrawn, paid out, or reduced, or debt contracted; and no statute of limitation is a bar to any suit against such directors for any sums for which they are liable by this section; *provided, however*, that where a corporation has been heretofore or may hereafter be formed for the purpose, among other things, of acquiring, holding, and selling real estate, water, and water rights, the directors of such corporation may, with the consent of stockholders representing two thirds of the capital stock thereof, given at a meeting called for that purpose, divide among the stockholders the land, water, or water rights so by such corporation held, in the proportions to which their holdings of such stock at the time of such division entitle them. All conveyances made by the corporation in pursuance of this section must be made and received subject to the debts of such corporation existing at the date of the conveyance thereof. Nothing herein prohibits a division and distribution of the capital stock of

any corporation which remains after the payment of all its debts, upon its dissolution, or the expiration of its term of existence. En. March 21, 1872. Am'd. 1891, 468; 1905, 558.

309. The change consists in the omission of the words, "nor must they divide, withdraw, or pay to the stockholders, or any of them, any part of the capital stock," where those words first occur, and in the omission of the words "in the event of its dissolution," after "thereof." The reason for the omission of the words first above alluded to is that by some clerical error they occur twice in the section. The words "in the event of its dissolution" are omitted because their presence makes it impossible to enforce the liability against the directors unless the corporation is first dissolved, which could not have been the intention of the legislature.—Code Commissioner's Note.

§ 310. **Removal of directors.** The board of directors may be removed from office by a vote of two thirds of the members, or of stockholders holding two thirds of the capital stock, at a general meeting held after previous notice of the time and place, and of the intention to propose such removal. Meetings of stockholders for this purpose may be called by the president, or by a majority of the directors, or by members or stockholders holding at least one half of the votes. Such calls must be in writing, and addressed to the secretary, who must thereupon give notice of the time, place, and object of the meeting, and by whose order it is called. If the secretary refuses to give the notice, or if there is none, the call may be addressed directly to the members or stockholders, and be served as a notice, in which case it must specify the time and place of meeting. The notice must be given in the manner provided in section three hundred and one of this title, unless other express provision has been made therefor in the by-laws. In case the board of directors is so removed, a new board may be elected at the same meeting. En. March 21, 1872. Am'd. 1905, 558.

310. The amendment, while it authorizes the removal of the whole board of directors by a two-thirds vote of the members or stockholders, denies the power to remove less than the whole number by such vote. The reason for this is that by the system of cumulative voting sanctioned by section 307, a minority may obtain representation in the board of directors; if so, a director elected to represent a minority of one third ought not to be removed by the subsequent vote of the other two thirds, and the system of cumulative voting and minority representation thus made ineffective. The first sentence only is changed.—Code Commissioner's Note.

§ 311. Justice of the peace to preside at meeting of corporation, when. Whenever, from any cause, there is no person authorized to call or to preside at a meeting of a corporation, any justice of the peace of the county where such corporation is established may, on written application of three or more of the stockholders or of the members thereof, issue a warrant to one of the stockholders or members, directing him to call a meeting of the corporation, by giving the notice required, and the justice may, in the same warrant, direct such person to preside at such meeting until a clerk is chosen and qualified, if there is no other officer present legally authorized to preside thereat. The application of a number of stockholders less than three, but holding a majority of the capital stock, has the same effect as an application by three or more stockholders or members. En. March 21, 1872. Am'd. 1905, 559.

311. By the amendment proposed the holders of a majority of the stock, though their number is less than three, are authorized to apply to the justice to issue a warrant for an election. The change consists in the addition of the last sentence.—Code Commissioner's Note.

*Repealed 1907
Oct 1596*

§ 312. Majority of capital stock must be represented at elections. At all elections or votes had for any purpose there must be a majority of the subscribed capital stock, or of the members, represented, either in person or by proxy in writing. Every person acting therein, in person or by proxy or representative, must be a member thereof, or a stockholder having stock in his own name on the stock books of the corporation at least ten days prior to the election. Any vote or election had other than in accordance with the provisions of this article is voidable at the instance of absent or any stockholders or members, and may be set aside by petition to the superior court of the county where the same is held. Any regular or called meeting of the stockholders or members may adjourn from day to day, or from time to time, if for any reason there is not present a majority of the subscribed stock or members, or no election had—such adjournment and the reasons therefor being recorded in the journal of proceedings of the board of directors. En. March 21, 1872. Am'd. 1877-8, 79; 1905, 559.

312. The change consists in the substitution of the words "superior court" in place of "district court," and in the omission of the words "bona fide" before "stockholder." For the purposes of election, a person appearing upon the books of

the corporation to be a stockholder should be permitted to vote; and election officers should not be vested with authority to deny such a stockholder the right to vote, or to claim that for some reason he is not a bona fide stockholder. (See *Smith v. S. F. & N. P. Ry. Co.*, 115 Cal. 584).—Code Commissioner's Note.

This amendment was approved March 21, 1905, and the following amendment of the same section was approved March 22, 1905:

§ 312. Corporations; election in, majority of stock must be represented; election set aside, when and by whom. At all elections or votes had for any purpose in corporations formed for profit there must be a majority of the subscribed capital stock or of the members represented, either in person or by proxy in writing; *provided*, that in all instances of corporations formed for purposes other than profit the by-laws shall provide the number of members or stockholders that shall constitute a quorum for the transaction of business. Every person acting therein (in person or by proxy or representative), must be a member thereof or a bona fide stockholder, having stock in his own name on the stock-books of the corporation at least ten days prior to the election. Any vote or election had other than in accordance with the provisions of this article is voidable at the instance of absent (or any) stockholders or members, and may be set aside by petition to the superior court of the county where the same was held. Any regular or called meeting of the stockholders or members may adjourn from day to day, or from time to time, if for any reason there is not present a majority of the subscribed stock or members, or no election had, such adjournment and the reasons therefor being recorded in the journal of proceedings of the board of directors. En. March 21, 1872. Am'd. 1877-8, 79; 1905, 787.

Amended 1907
State 10: 596.

This amendment was approved March 22, 1905, the preceding amendment of the same section being approved March 21, 1905.

§ 314. Election not taking place on appointed day. If from any cause an election does not take place on the day appointed by law or the by-laws, or otherwise, it may be held on any day thereafter as is provided for in such by-laws, or to which such election may be adjourned or ordered by the directors. If an election has not been held at the appointed time, and no adjourned or other meeting for the purpose has been ordered by the directors, a meeting may

be called by the stockholders as provided in section three hundred and ten. En. March 21, 1872. Am'd. 1905, 559.

814. The design of the amendment is to extend the provisions of the section to all elections howsoever authorized, and for this purpose the words "by law" are inserted after "appointed," "in" is omitted after "appointed," and "or otherwise" are inserted after "by-laws."—Code Commissioner's Note.

§ 315. New election may be ordered by the court. Upon the application of any person or body corporate aggrieved by any election held by any corporate body, the superior court of the county in which such election is held must proceed forthwith to hear the allegations and proofs of the parties, or otherwise inquire into the matters of complaint, and thereupon confirm the election, order a new one, or direct such other relief in the premises as accords with right and justice. Upon filing the petition, and before any further proceedings are had under this section, five days' notice of the hearing must be given, under the direction of the court or the judge thereof, to the adverse party, or those to be affected thereby. En. March 21, 1872. Am'd. 1877-8, 79; 1905, 560.

815. The change consists in the substitution of the words "superior court of the county" for "district court of the district."—Code Commissioner's Note.

§ 321. Supp. Cal. Rep. Cit. 140, 105.

§ 321b. Stockholders' meetings, who may vote at; proxies. At all meetings of stockholders of corporations organized under the laws of this state, or in the case of corporations having no capital stock, then at all meetings of the members of such corporation, only the stockholders or members actually present shall be entitled to vote on any proposition, including the election of directors and other officers of the corporation, unless proxies from absent or nonattending stockholders or members shall be held by some person or persons present at such meeting and shall be executed in accordance with the provisions of this section. Every such proxy must be executed in writing by the member or stockholder himself, or by his duly authorized attorney. No proxy heretofore given or made shall be valid after the expiration of eleven months from the passage of this act, unless the member or stockholder executing it shall

have specified therein the length of time for which such proxy is to continue in force, which must be for some limited period, and in no case to exceed seven years from the date of the execution of such proxy. No proxy hereafter to be given or made shall be valid after the expiration of eleven months from the date of its execution, unless the member or stockholder executing it shall have specified therein the length of time for which such proxy is to continue in force, which must be for some limited period, and in no case to exceed seven years from the date of the execution of such proxy. Every proxy shall be revocable at the pleasure of the person executing it; but a corporation having no capital stock may prescribe in its by-laws the persons who may act as proxies for members, and the length of time for which such proxies may be executed. En. Stats. 1905, 22.

§ 322. **Liability of stockholder in a corporation.** Each stockholder of a corporation is individually and personally liable for such proportion of all its debts and liabilities contracted or incurred during the time he was a stockholder as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation. Any creditor of the corporation may institute joint or several actions against any of its stockholders, for the proportion of his claim payable by each, and in such action the court must ascertain the proportion of the claim or debt for which each defendant is liable, and a several judgment must be rendered against each, in conformity therewith. If any stockholder pays his proportion of any debt due from the corporation, incurred while he was such stockholder, he is relieved from any further personal liability for such debt, and if an action has been brought against him upon such debt, it must be dismissed, as to him, upon his paying the costs, or such proportion thereof as may be properly chargeable against him. The liability of each stockholder is determined by the amount of stock or shares owned by him at the time the debt or liability was incurred; and such liability is not released by any subsequent transfer of stock. The term stockholder, as used in this section, applies not only to such persons as appear by the books of the corporation to be such, but also to every equitable owner of stock, although the same appears on the books in the name of another; and also to every person who has advanced the installments or

purchase money of stock in the name of a minor, so long as the latter remains a minor; and also to every guardian, or other trustee, who voluntarily invests any trust funds in the stock. Trust funds in the hands of a guardian, or trustee, are not liable under the provisions of this section, by reason of any such investment; nor must the person for whose benefit the investment is made be responsible in respect to the stock until he becomes competent and able to control the same; but the responsibility of the guardian or trustee making the investment continues until that period. Stock held as collateral security, or by a trustee, or in any other representative capacity, does not make the holder thereof a stockholder within the meaning of this section, except in the cases above mentioned, so as to charge him with any proportion of the debts or liabilities of the corporation; but the pledgor, or person or estate represented, is to be deemed the stockholder, as respects such liability. In a corporation having no capital stock, each member is individually and personally liable for an equal share of its debts and liabilities, and similar actions may be brought against him, either alone or jointly with other members, to enforce such liability as by this section may be brought against one or more stockholders, and similar judgments may be rendered. The liability of each stockholder of a corporation formed under the laws of any other state or territory of the United States, or of any foreign country, and doing business within this state, is the same as the liability of a stockholder of a corporation created under the constitution and laws of this state. En. March 21, 1872. Am'd. 1873-4, 203; 1875-6, 73; 1905, 396. Supp. Cal. Rep. Cit. 140, 104; 140, 105; 141, 227; 142, 384.

322. The change consists in the substitution of the language of the first sentence of Section 3 of Article XII of the Constitution in place of the first sentence of the present section. As the section now stands, it is believed to be unconstitutional. (See *Larrabee v. Baldwin*, 35 Cal. 155.) The words "an equal share" are substituted for "his proportion."—Code Commissioner's Note.

§ 323. **Certificates of stock, how issued.** All corporations for profit must issue certificates for stock when fully paid up, signed by the president and secretary, and may provide, in their by-laws for issuing certificates prior to full payment, under such restrictions and for such purposes as their by-laws may provide, but any certificate issued prior to full pay-

ment must show on its face what amount has been paid thereon. En. March 21, 1872. Am'd. 1905, 397.

323. The change consists in the addition of the words "but any certificate issued prior to full payment must show on its face what amount has been paid thereon," the object being to require a certificate issued prior to full payment to show the amount paid thereon.—Code Commissioner's Note.

§ 324. Supp. Cal. Rep. Cit. 141, 16.

§ 325. **Married woman may transfer stock; dividends paid to her; proxy of.** Shares of stock in corporations standing on the books of the corporation in the name of a married woman may be transferred by her, her agent or attorney, without the signature of her husband, and in the same manner as if such married woman were a femme sole. All dividends payable upon any of such shares of stock may be paid to her, her agent or attorney, in the same manner as if she were unmarried; and any proxy or power given by her, touching any of such shares, is valid and binding, and neither it nor any receipt for dividends need be signed by her husband. En. March 21, 1872. Am'd. 1905, 397.

325. The amendment is designed to make it clear that shares of stock standing in the name of a married woman are presumed to be her separate property, and that they may be dealt with by her as such, in the absence of proof and notice to the contrary.—Code Commissioner's Note.

§ 328. **Shares of stock, etc., duplicates how issued.** Whenever a certificate of stock or of shares in a corporation organized under the laws of this state has been lost, destroyed or wrongfully withheld, the owner thereof may bring an action against such corporation in the superior court of the county in which is located its principal place of business, for the purpose of obtaining a new or duplicate certificate. If by the books of the corporation the stock stands in the name of a person other than the plaintiff, or if by such books it appears that some other person claims or has some right, title, or interest in, or lien upon, such stock, all such persons must be made parties defendant with the corporation. Summons must be issued and served as in other civil actions, and in addition thereto, the court must direct its clerk to issue and cause to be published, at least once a week for four successive weeks, in some newspaper published in the county, a notice setting forth the pendency of the action,

the names of the parties thereto, the court in which it is pending, the name of the corporation issuing the stock, the number of the certificate and the number of the shares, the name of the person mentioned as stockholder in the certificate, and notifying all persons claiming said shares, or any of them, or any interest or lien therein or thereupon, to be and appear before the court at a time and place to be designated in the notice not less than thirty days from the first publication thereof, then and there to show cause why a new certificate should not be directed to be issued to the plaintiff, and to set forth their rights in or claim to such shares. If any one appears and answers or intervenes in the action, it must proceed to trial as in other civil cases, and the court must enter judgment as from the facts established may be proper; but if no one appears within the time designated in such notice, nor within the time allowed by law after the service of such summons, the court must hear such evidence as may be offered in support of the allegations of the complaint, and make and file its decision thereon, and thereupon may enter its judgment canceling the lost, destroyed or wrongfully withheld certificate and directing the corporation, upon payment to it of all costs incurred by it in the premises and without costs against the corporation, to issue to the plaintiff a new or duplicate certificate. After the issuing of a new certificate by the corporation pursuant to any judgment in such action, no action can ever be maintained by any person against the corporation in reference to said lost or destroyed certificate or the shares represented thereby, and thereafter any such action is forever barred as against the corporation. En. Stats. 1905, 500.

§ 331. Supp. Cal. Rep. Cit. 141, 227; 145, 700; 145, 701; 145, 702.

§ 332. Supp. Cal. Rep. Cit. 145, 701; 145, 710. Subd. 1—145, 702; 145, 707; 145, 709.

§ 349. Supp. Cal. Rep. Cit. 145, 700; 145, 701.

§ 354. Supp. Cal. Rep. Cit. Subd. 4—144, 594.

§ 360. Real estate, amount which may be held by. No corporation shall acquire or hold any more real property than

may be reasonably necessary for the transaction of its business, or the construction of its works, except as otherwise specially provided. A corporation may acquire real property, as provided in title seven, part three, of the Code of Civil Procedure, when needed for any of the uses and purposes mentioned in said title. By a unanimous vote of all the directors at any regular meeting, any corporation existing, or hereafter to be formed under the laws of this state, may acquire and hold the land and building on and in which its business is carried on, and may improve the same to any extent required for the convenient transaction of its business. En. March 21, 1872. Am'd. 1873-4, 208; 1905, 774.

Supp. Cal. Rep. Cit. 144, 594.

360. Section 363, approved March 5, 1899, is added to section 360, to the end that there shall not, as now, be two sections numbered 363.—Code Commissioner's Note.

§ 361. En. Stats. 1875-6, 75. Rep. 1905, 775.

361. Repealed, and the matter therein added to section 587a.—Code Commissioner's Note.

§ 362. Articles of incorporation, how amended. Any corporation may amend its articles of incorporation by a majority vote of its board of directors or trustees, and by a vote or written assent of the stockholders representing at least two-thirds of the subscribed capital stock of such corporation, or the written assent of the majority of the members, if there is no capital stock; and a copy of the said articles of incorporation, as thus amended, duly certified to be correct by the president and secretary of the board of directors or trustees of such corporation, shall be filed in the office where the original articles of incorporation are filed, and a certified copy thereof, duly certified by such county clerk, in the office of the secretary of state. A copy of such articles of incorporation, so amended, duly certified by the secretary of state, must be filed in the office of the county clerk of every county in which such corporation has or holds property, except only the county in which the original amended articles of incorporation have been filed. Any corporation which shall amend its articles of incorporation and shall fail to file copies of its amended articles, as required by the preceding sentence, shall be subject to the penalties and liabilities provided in section two hundred and ninety-

nine for a failure of corporations to file copies of their articles of incorporation in the offices of the county clerks of the counties in which they shall purchase, hold, or locate property, and from the time of so filing such copy of the amended articles of incorporation, such corporation shall have the same powers, and the stockholders thereof shall thereafter be subject to the same liabilities, as if such amendment had been embraced in the original articles of incorporation. Such original and amended articles of incorporation shall together contain all the matters and things required by the laws under which the original articles of incorporation were executed and filed. Nothing contained in this section must be construed to cure or amend any defect existing in the original articles of incorporation heretofore filed, in that such articles did not set forth the matters required to make the same valid at the time of filing. If the assent of two thirds of said stockholders, or of the majority of members where there is no capital stock, to such amendment has not been obtained, a notice of the intention to make such amendment must first be advertised for thirty days in some newspaper published in the town, city, county, or city and county in which the principal place of business of the corporation is located, before the filing of the proposed amendment. Nothing in this section shall be construed to authorize any corporation to increase or diminish its capital stock, change its name, extend its corporate existence, or increase or diminish the number of its directors, without complying with the special provisions of this code applicable thereto. En. Stats. 1885, 91. Am'd. 1893, 131; 1903, 411; 1905, 775.

§ 363. En. 1889, 67. Rep. 1905, 776.

363. There were formerly two sections of this number, one adopted March 19, 1889, and the other adopted March 5, 1889. The former remains in force; the latter was repealed, 1905, 776. See Code Commissioner's note under § 360, ante.

§ 384. Supp. Cal. Rep. Cit. 145, 480.

§ 388. Franchises sold under execution. For the satisfaction of any judgment against any person, company, or corporation having any franchise other than the franchise of being a corporation, such franchise, and all the rights and

privileges thereof, may be levied upon and sold under execution, in the same manner, and with the same effect, as any other property. En. March 21, 1872. Am'd. 1873-4, 208; 1897, 16; 1905, 409.

388. This section as it now stands applies only to corporations authorized to receive tolls, and is probably unconstitutional as creating a special law where a general law may be made applicable. (See *Krause v. Durbrow*, 19 Cal. Dec. 93.) The amendment makes the section applicable to all corporations.—Code Commissioner's Note.

§ 391. **Liabilities same as before sale.** The person, company, or corporation whose franchise is sold, as in this article provided, in all other respects retains the same powers, is bound to the discharge of the same duties, and is liable to the same penalties and forfeitures, as before such sale. En. March 21, 1872. Am'd. 1905, 409.

391. The amendment makes the section applicable to persons and companies as well as to corporations.—Code Commissioner's Note.

§ 392. **Redemption.** Redemption from any such sale may be had as provided in the Code of Civil Procedure in the case of redemptions from sales of real estate on execution. En. March 21, 1872. Am'd. 1905, 409.

392. The amendment makes applicable to an execution sale of franchises the law of redemption applicable to other sales of real property.—Code Commissioner's Note.

§ 393. **Sale where made.** The sale of any franchise under execution must be made in the county in which the corporation has its principal place of business, or in which the property, or some portion thereof, is situated. En. March 21, 1872. Am'd. 1873-4, 209; 1905, 409.

393. Omits the words "upon which the taxes are paid," that having apparently no relevancy to the section.—Code Commissioner's Note.

§ 399. En. March 21, 1872. Rep. 1905, 563.

399. This section, which purports merely to designate the place in the Code of Civil Procedure where the dissolution of corporations is provided for, does not state any rule of law and constitutes but an imperfect index to the provisions referred to.—Code Commissioner's Note.

§ 400. Corporations, directors are trustees of creditors, when dissolved, except. Unless other persons are appointed by the court, the directors or managers of the affairs of a corporation at the time of its dissolution are trustees of the creditors and stockholders or members of the corporation dissolved, and have full power to settle the affairs of the corporation. En. March 21, 1872. Am'd. 1905, 563.

400. The change consists in the substitution of the word "a" for "such."—Code Commissioner's Note.

§ 401. Extension of corporate existence. Every corporation formed for a period less than fifty years, may, at any time prior to the expiration of the term of its corporate existence, extend such term to a period not exceeding fifty years from its formation. Such extension may be made at any meeting of the stockholders or members called by the directors expressly for considering the subject if voted by stockholders representing two thirds of the capital stock; or by two thirds of the members; or may be made upon the written assent of two thirds of the members or of stockholders representing two thirds of the capital stock. A certificate of the proceedings of the meeting upon such vote, or upon such assent, must be signed by the chairman and secretary of the meeting and a majority of the directors, and be filed in the office of the county clerk where the original articles of incorporation were filed, and a certified copy thereof in the office of the secretary of state, and thereupon the term of the corporation is extended for the specified period. En. March 21, 1872. Am'd. 1873-4, 209; 1905, 564.

401. The design of the amendment is to require the written assent of stockholders representing two thirds of the capital stock instead of permitting two thirds in number of the stockholders to act by their written consent. The change consists in the substitution of the words "two thirds of the members or of stockholders representing two thirds of the capital stock" in place of that number of stockholders or members.—Code Commissioner's Note.

DIVISION FIRST.

PART IV.

TITLE I.

CHAPTER V.

New chapter added March 20, 1905. Stats. 1905, 410.

GENERAL PROVISIONS AFFECTING CORPORATIONS.

§ 403. Title one to apply to all corporations, with certain exceptions.

§ 404. Power of the legislature to amend or repeal this part, or any title, chapter, article, or section thereof, and to dissolve all corporations created thereunder.

§ 403. Title one to apply to all corporations, with certain exceptions. The provisions of this title are applicable to every corporation, unless such corporation is excepted from its operation, or unless a special provision is made in relation thereto inconsistent with some provision in this title, in which case the special provision prevails. En. March 21, 1872. Rep. 1905, 410. En. Stats. 1905, 410.

403, 404. The bill adds a new chapter entitled "General Provisions Affecting Corporations." Said chapter is made up of the old section 403, which now stands in a chapter entitled "Extension and Dissolution of Corporations," and of the matter now in section 384, which now stands in a chapter entitled "Examination of Corporations." The object of the rearrangement is the placing of the sections under a more appropriate chapter heading.—Code Commissioner's Note.

§ 404. Power of legislature to amend or repeal this part, or any title, chapter, article, or section thereof, and to dissolve all corporations created thereunder. The legislature may at any time amend or repeal this part, or any title, chapter, article, or section thereof, and dissolve all corpora-

tions created thereunder; but such amendment or repeal does not, nor does the dissolution of any such corporation, take away or impair any remedy given against any such corporation, its stockholders or officers, for any liability which has been previously incurred. En. Stats. 1905, 410.

See note to § 403, ante.

PART IV.

TITLE I.

CHAPTER VI.

Chapter added March 21, 1905. Stats. 1905, 630.

FOREIGN CORPORATIONS.

- § 405. Designation of person on whom process may be served. Service on the secretary of state, when valid.
- § 406. Foreign corporations, statute of limitations in favor of. Proof of corporate existence. Change of designation.
- § 407. Foreign railway corporations, rights of in this state.
- § 408. Foreign corporations to file certified copies of articles of incorporation.
- § 409. Foreign corporations, fees to be paid by, on filing certified copies of articles of incorporation.
- § 410. Foreign corporations, penalty for failure to file certified copies of articles of incorporation.

§ 405. Designation of person on whom process may be served. Service on the secretary of state, when valid. Every corporation other than those created by or under the laws of this state must, within forty days from the time it commences to do business therein, file in the office of the secretary of state a designation of some person residing within the state upon whom process issued by authority of or

under any law of this state may be served. A copy of such designation, duly certified by the secretary of state, is sufficient evidence of such appointment. Such process may be served on the person so designated, or, in the event that no such person is designated, then on the secretary of state, and the service is a valid service on such corporation. En. Stats. 1905, 630.

405, 406, 407. These sections codify the statute of 1889, page 111, and section 1, statute of 1880, page 21.—Code Commissioner's Note.

The act intended to be referred to here by the Commissioner is probably that of 1871-2, p. 826, as amended 1899, p. 111.—Ed.

§ 406. Foreign corporations, statute of limitations in favor of. Proof of corporate existence. Change of designation. Every corporation which complies with the provisions of this chapter is thereafter entitled to the benefit of the laws of this state limiting the time for the commencement of civil actions, but no corporation not created by or under the laws of this state is entitled to the benefit thereof, nor can any such corporation maintain or defend any action or proceeding in any court of this state until the corporation has complied with the provisions of the preceding section. In any action or proceeding instituted against any body styled as a corporation, but not created by nor under the laws of this state, evidence that such body has acted as a corporation, or employed methods usually employed by corporations, must be received by the court for the purpose of proving the existence of such corporation, the sufficiency of such evidence to be determined by the court with like effect as in other cases. Every corporation which has complied with the laws then in force, requiring it to make and file a designation of the person upon whom process against it may be served, need not make or file any further designation. Any designation heretofore or hereafter made may be revoked by the filing by the corporation with the secretary of state of a writing stating such revocation. Within forty days after the death or removal from the state of any person designated by the corporation, or after the revocation of the designation, the corporation must make a new designation, or be subject to the provisions and penalties of this chapter. En. Stats. 1905, 630.

See note to § 405, ante.

Civil Code—4

§ 407. Foreign railway corporations, rights of in this state. Every railway or other corporation organized for the purpose of carrying freight or passengers under or by virtue of the laws of the United States, or of any state or territory thereof, may build railroads, exercise the right of eminent domain, and transact any other business which it might do if it were created and organized under or by virtue of the laws of this state, and has the same rights, privileges, and immunities, and is subject to the same laws, penalties, obligations, and burdens as if created or organized under and by virtue of the laws of this state. Nothing contained in this section shall be construed to exempt any corporation from any duty or liability imposed upon it by any of the provisions of this character. En. Stats. 1905, 631.

See note to § 405, ante.

§ 408. Foreign corporations to file certified copies of articles of incorporation. Every corporation organized under the laws of another state, territory, or of a foreign country, which is now doing business in this state, or is maintaining an office herein, or which shall hereafter do business in this state or maintain an office herein, or which shall enter this state for the purpose of doing business herein, must file in the office of the secretary of state of the State of California a certified copy of its articles of incorporation, or of its charter, or of the statute or statutes, or legislative, or executive, or governmental act or acts creating it, in cases where it has been created by charter, or statute, or legislative, or executive, or governmental act, and a certified copy thereof, duly certified by the secretary of state of this state, in the office of the county clerk of the county where its principal place of business is located, and also where such corporation owns property. En. Stats. 1905, 631.

408, 409, 410. These sections codify the statute of 1901, page 108.—
Code Commissioner's Note.

§ 409. Foreign corporations, fees to be paid by, on filing certified copies of articles of incorporation. For filing and issuing a certified copy as required in section four hundred and eight of this code, corporations formed under the laws of another state, or of a territory, or of a foreign country, must pay the same fees as are paid by corporations formed under the laws of this state. En. Stats. 1905, 631.

See note to § 408, ante.

§ 410. **Foreign corporations, penalty for failure to file certified copies of articles of incorporation.** Every corporation organized under the laws of another state, territory, or of a foreign country, which shall neglect or fail, within ninety days from the taking effect of this section, to comply with the conditions of sections four hundred and eight and four hundred and nine of this code, shall be subject to a fine of not less than five hundred dollars, to be recovered in any court of competent jurisdiction; and it is hereby made the duty of the secretary of state, as he may be advised that corporations are doing business in contravention of sections four hundred and eight and four hundred and nine of this code, to report the fact to the governor, who shall instruct the district attorney of the county wherein such corporation has its principal place of business, or the attorney-general of the state, or both, as soon as practicable, to institute proceedings to recover the fine provided for in this section, and the amount so recovered must be paid into the state treasury to the credit of the general fund of the state; in addition to which penalty, no foreign corporation which shall fail to comply with sections four hundred and eight and four hundred and nine of this code can maintain any suit or action in any of the courts of this state until it has complied with said sections; *provided*, that any such corporation which, prior to the 8th day of March, 1901, shall have complied with the provisions of the act entitled "An act to amend 'An act in relation to foreign corporations,' approved April 1, 1872," approved March 17, 1899, is exempted from the provisions of this section and the two sections next preceding. En. Stats. 1905, 631.

See note to § 408, ante.

§ 415. **Purchase and conveyance of real estate.** No insurance corporation may purchase, hold or convey real estate, except as hereinafter set forth, to wit:

1. The building in which it has its principal office and the land upon which it stands.

2. Also, such as may be requisite for its accommodation in the convenient transaction of its business.

3. Also, such as may be conveyed to it, or to any person for it, by way of mortgage, or in trust or otherwise, to secure or provide for the payment of loans previously contracted or for moneys due.

4. Also such as may be purchased at sales upon deeds of trust, or judgments obtained or made for such loans or debts.

5. Also such as may be conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

All such real estate, mentioned in subdivisions three, four and five, so acquired, which is not requisite for the accommodation of such corporation in the transaction of its business, must be sold and disposed of within five years after such corporation acquired title to the same. En. March 21, 1872. Am'd. 1905, 21.

§ 421. Insurance corporations; investment of capital. Corporations organized subsequent to April first, eighteen hundred and seventy-eight, under the laws of this state for the transaction of business in any kind of insurance, may invest their capital and accumulations in the following named securities:

1. In the purchase of, or loans upon interest-bearing bonds of the United States government.

2. In the purchase of, or loans upon interest-bearing bonds of any of the states of the United States, not in default for interest on such bonds.

3. In the purchase of, or loans upon interest-bearing bonds of any of the counties and incorporated cities and towns of any state or territory of the United States not in default for interest on such bonds.

4. In loans upon unincumbered real property, which shall be worth, at the time of the investment, at least, forty per cent more than the sum loaned, or upon merchandise or cereals in warehouse, but in no instance shall such loan be made in excess of seventy-five per cent of the security taken.

5. Corporations engaged in the business of insuring titles to real estate may, after the investment of one hundred thousand dollars in the manner provided for in subdivisions one, two, three and four of this section, invest an amount not exceeding fifty per cent of their subscribed capital stock, in the preparation or purchase of the materials or plant necessary to enable them to engage in such business; and such material or plant shall be deemed an asset valued at the actual cost thereof, in all statements and proceedings required by law for the ascertainment and determination of the condition of such corporations.

6. Corporations organized for and engaged in the business of fire, life, health, accident and marine insurance, may,

after the investment of two hundred thousand dollars, and corporations formed or organized for the transaction of business in any kind of insurance not enumerated in section four hundred and nineteen of the Civil Code may, after the investment of one hundred thousand dollars, in the manner provided in subdivisions one, two, three and four of this section, invest the balance of their capital and any accumulations in interest-bearing first mortgage bonds of any corporations (except mining companies), not in default of interest, organized and carrying on business under the laws of any state of the United States. *Provided*, that a two-thirds vote of all the directors of such corporations shall approve such investment. It shall be the duty of the officers of such corporation to report quarterly, on the first days of January, April, July and October of each year to the insurance commissioner a list of such investments so made by them, and the insurance commissioner may, if such investments, or any of them, seem injudicious to him, require the sale of the same. But no investment in the securities named in subdivisions one, two, three and six of this section must be made in an amount exceeding the market value of such securities, at the date of such investment.

7. Life insurance companies, or corporations, no matter when organized, may loan upon their own policies, *provided* that the amount so loaned upon each policy shall not exceed the reserve against said policy at the time said loan is made; *provided further*, that no policy loans whatever shall ever be used as security which may be deposited with the insurance commissioner under section six hundred and thirty-four of the Political Code; *and provided further*, that whenever any such loan in any amount is made on a policy registered with the insurance commissioner under said section six hundred and thirty-four of the Political Code, such registration shall be forthwith canceled.

Nothing in this section contained shall be construed as in anywise affecting the provisions of section four hundred and forty-four of this code. En. Stats. 1905, 34.

This section was adopted March 3, 1905.

There was also another § 421 adopted March 21, 1905, as follows:

§ 421. Corporations, insurance, in general; how capital and accumulations may be invested by. Corporations organized under the laws of this state for the transaction of

business in any kind of insurance, may invest their capital and accumulations in the following named securities.

1. In the purchase of, or loans upon interest-bearing bonds of the United States government.

2. In the purchase of, or loans upon interest-bearing bonds of any of the states of the United States, not in default for interest on such bonds.

3. In the purchase of, or loans upon interest-bearing bonds of any of the counties and incorporated cities and towns of any state or territory of the United States not in default for interest on such bonds.

4. In loans upon unincumbered real property, which shall be worth, at the time of the investment, at least, forty per cent more than the sum loaned, or upon merchandise or cereals in warehouse, but in no instance shall such loan be made in excess of seventy-five per cent of the security taken.

5. Corporations engaged in the business of insuring titles to real estate may, after the investment of one hundred thousand dollars in the manner provided for in subdivisions one, two, three and four of this section, invest an amount not exceeding fifty per cent of their subscribed capital stock, in the preparation or purchase of the materials or plant necessary to enable them to engage in such business; and such material or plant shall be deemed an asset valued at the actual cost thereof, in all statements and proceedings required by law for the ascertainment and determination of the condition of such corporations.

6. Corporations organized for and engaged in the business of fire, life, health, accident and marine insurance, may, after the investment of two hundred thousand dollars, and corporations formed or organized for the transaction of business in any kind of insurance not enumerated in section four hundred and nineteen of the Civil Code may, after the investment of one hundred thousand dollars, in the manner provided in subdivision one, two, three and four of this section, invest the balance of their capital and any accumulations in the purchase of or loans upon the stock of any corporation (except mining companies) organized and carrying on business under the laws of the State of California which have at the time of investment a market value of not less than their paid-in value, and which are rated as first-class securities, or in interest-bearing first mortgage bonds of same not in default of interest; *provided*,

that a two-thirds vote of all the directors of such corporations shall approve such investment. It shall be the duty of the officers of such corporation to report quarterly during the months of January, April, July and October of each year to the insurance commissioner a list of such investments so made by them, and the insurance commissioner may, if such investments, or any of them, seem injudicious to him, require the sale of the same. But no investment in the securities named in subdivisions one, two, three and six of this section must be made in an amount exceeding the market value of such securities, at the date of such investment.

7. Life insurance corporations may loan upon their own policies *provided* that the amount so loaned upon each policy shall not exceed the reserve against said policy at the time said loan is made; *provided further*, that no policy loans whatever shall ever be used as security which may be deposited with the insurance commissioner under section six hundred and thirty-four of the Political Code; *and provided further*, that whenever any such loan in any amount is made on a policy registered with the insurance commissioner under said section six hundred and thirty-four of the Political Code, such registration shall be forthwith canceled.

8. Nothing in this section contained shall be construed as in anywise affecting the provisions of section four hundred and forty-four of this code. En. 1905, 628.

§ 427. En. March 21, 1872. *Am'd.* 1873-4, 210, 1877-8, 81; 1887, 22; 1899, 66. Rep. 1905, 34; 1905, 628.

§ 428. Corporations, fire and marine; amount of risk to be taken by. Fire and marine insurance corporations must never take, on any one risk, whether it is a marine insurance or an insurance against fire, a sum exceeding one tenth part of their capital actually paid in, and intact at the time of taking such risk, without at once reinsuring the excess above one tenth. En. March 21, 1872. *Am'd.* 1873-4, 210; 1905, 570.

428. The change consists in the insertion of the words "at once" before "reinsuring."—Code Commissioner's Note.

§ 431. En. Stats. 1877-8, 81. Rep. 1905, 571.

431, 452. Section 431, which deals with the amounts to be received by life insurance companies, now stands in a chapter entitled "Fire, Marine, and Title Insurance Corporations." It is transferred to a more appropriate chapter, and numbered 452.—Code Commissioner's Note.

§ 437. **Mutual life insurance companies; capital stock of; capital stock to be paid up; guarantee fund.** Every corporation formed for the purpose of mutual insurance on the lives or health of persons, or against accidents to persons for life or any fixed period of time, or to purchase and sell annuities, must have a capital stock of not less than two hundred thousand dollars. It must not make any insurance upon any risk or transact any other business as a corporation until its capital stock is fully paid up in cash, nor until it has also obtained a fund, to be known as a "guarantee fund," of not less than two hundred and fifty thousand dollars, as is hereinafter provided. If more than the requisite amount is subscribed, the stock must be distributed pro rata among the subscribers. Any subscription may be rejected by the board of directors or the committee thereof, either as to the whole or any part thereof, and must be, so far as rejected, without effect, nothing in this section shall be deemed to contravene any of the provisions of section four hundred and fifty-one. En. March 21, 1872. Am'd. 1905, 183.

§ 448. En. March 12, 1872. Rep. 1905, 571.

448. This section exempts accident insurance companies from stamp duties, but as there are no such duties under the law as it now stands the section is unnecessary.—Code Commissioner's Note.

§ 450. Supp. Cal. Rep. Cit. 139, 335.

§ 452. **Corporations, life insurance, dividends, how made.** No corporation formed under the laws of this state, and transacting life insurance business, must make any dividends, except from profits remaining on hand after retaining unimpaired:

1. The entire capital stock;
2. A sum sufficient to pay all losses reported or in course of settlement, and all liabilities for expenses and taxes;
3. A sum sufficient to reinsure all outstanding policies, as ascertained and determined upon the basis of the Ameri-

can experience table of mortality, and interest at the rate of four and one half per cent per annum. En. Stats. 1877-8, 83. Rep. 1880, 92. En. 1905, 571.

See note to § 431, ante.

PART IV.

TITLE II.

CHAPTER IV.

New chapter added March 20, 1905. Stats. 1905, 411

MUTUAL BENEFIT AND LIFE ASSOCIATIONS.

§ 452a. Formation of the association.

§ 453. Levying of assessments. By-laws which may be made.

§ 452a. Formation of the association. Associations of not exceeding one thousand persons may be formed for the purpose of paying to the nominee of any member a sum, upon the death of the member, not exceeding three dollars for each member of the association. Such association may be formed by filing articles of incorporation in the office of the clerk of the county in which the principal place of business is situated and a certified copy of such articles of incorporation, duly certified by the county clerk, in the office of the secretary of state. Such articles must state the name of the corporation, its general purposes, its principal place of business, its term of existence, not exceeding fifty years, the names and residences of the directors selected or appointed to serve for the first year, and must be signed and verified as required by sections two hundred and ninety-two and five hundred and ninety-four. En. Stats. 1905, 411.

452a, 453. The statute of 1873-4, page 745, as amended by the statutes of 1880, page 25, and 1901, page 6, relating to mutual benefit associations, is codified in the above sections, and a new chapter, entitled "Mutual Benefit and Life Associations," is added, to consist of sections 452a and 453.—Code Commissioner's Note.

§ 453. **Levying of assessments.** By-laws which may be made. Each association provided for in this chapter may, on the death of a member, levy an assessment on the surviving members of not exceeding three dollars for each member, and collect and pay the same to the nominee of such decedent, and may also provide for the payment of such annual payments by members as may be deemed just, but no member must be subject to any annual assessment in excess of that established when he joined the association. The association may make such by-laws not inconsistent with the laws of the state as may be necessary for its government and the transaction of its business; may, by its name, sue and be sued; loan such funds as it may have on hand; and own sufficient real estate for its business purposes and such as it may be necessary to purchase on foreclosure of its mortgages. En. Stats. 1905, 411.

See note to § 452a, ante.

PART IV.

TITLE II.

CHAPTER V.

New chapter added March 21, 1905. Stats. 1905, 571.

CORPORATIONS TO DISCOVER FIRE AND SAVE PROPERTY AND HUMAN LIFE FROM DESTRUCTION THEREBY.

§ 453a. Powers of the corporation.

§ 453b. Right of way of corporation and its officers when running to fires.

§ 453c. Yearly meeting of corporation, notice to be given thereof, and proceedings which may be authorized thereat.

§ 453a. **Powers of the corporation.** Any corporation of underwriters heretofore organized and now existing, or which may be hereafter organized under the laws of this

state, for the purpose of discovering and preventing fires and of saving property and human life from conflagration, and doing business within any municipal corporation of this state, has power, at its own proper cost and expense, to maintain a corps of men, with proper officers, equipped with the necessary machinery and apparatus therefor, whose duty it is, so far as practicable, to discover and prevent fires and save property and human life from conflagration; and for the effective discharge of such duties, authority is hereby granted such corps to enter any building on fire, or in which property is on fire, or which such corps or any officer thereof deems to be immediately exposed to any existing fire, or in danger of taking fire from a burning building, and to remove or otherwise save and protect from conflagration or damage by water any property, during and immediately after such fire. Nothing in this chapter must be so construed as in any degree to lessen, impair, or interfere with the powers, privileges, duties, or authority of the regular fire department of such municipality; nor can any act of such corps justify any owner of any building or property in abandoning such building or property. En. Stats. 1905, 571.

453a, 453b, 453c. The statute of 1875-6, page 689, concerning the powers of underwriters, as amended by the statute of 1897, page 223, is codified in the sections above named, a new chapter being added, entitled "Corporations to Discover Fire, and to Save Property and Human Life From Destruction Thereby," to consist of sections 453a, 453b, and 453c. Code Commissioner's Note.

§ 453b. **Right of way of corporation and its officers when running to fires.** Such corporation, with its officers and corps, when running to a fire with its horses, vehicles, and salvage apparatus, has the same right of way as is or may be bestowed by any ordinance of the municipality or law of this state upon the regular fire department of the municipality wherein such corporation is acting; but the rights of such fire department must always be paramount to the rights of such corporation. All ordinances now existing or which may hereafter be passed by the municipal authorities of any city and county, or of any incorporated city or town wherein such a corporation may carry on business, and all laws of this state applicable to such city and county, or city or town, for the conviction or punishment of any person or persons willfully or carelessly obstructing

the progress of the apparatus of the fire department of such city and county, or city or town, while going to a fire, or of any person or persons willfully or carelessly injuring any animal or property of said fire department, are equally applicable to any person or persons willfully or carelessly obstructing the progress of the apparatus of such corporation while going to a fire, and to any person or persons who willfully or carelessly injures any animal or property of such corporation; and said laws and ordinances, and their penalties, may be enforced in the same courts and in the same manner, and with equal force and effect, as in the case of the fire department. En. Stats. 1905, 572.

See note to § 453a, ante.

§ 453c. Yearly meeting of corporation, notice to be given thereof, and proceedings which may be authorized thereat. In the month of July, in every year, there must be held a meeting of all corporations created for the purposes specified in this chapter; of which ten days' previous notice must be inserted in at least one daily newspaper published in the municipality where said corporation is organized or established, at which meeting each insurance company, corporation, association, underwriter, agent, person, or persons doing a fire insurance business in said municipality, whether members of said corporation or not, shall have a right to be represented, and shall be entitled to one vote. A majority of the whole number so represented has power to decide upon the question of sustaining the fire patrol organized by corporations heretofore created, or that may be hereafter created, and fixing the maximum amount of expenses which may be incurred therefor during the fiscal year next to ensue, which amount must in no case exceed two per centum of the aggregate premiums returned as received, as provided in this section, and the whole of such amount, or so much thereof as may be necessary, may be assessed upon all insurance companies, corporations, associations, underwriters, agents, person, or persons who assume risks and accept premiums for fire insurance in said municipality, as hereinbefore mentioned, in proportion to the several amounts of premiums returned, as received by each, as hereinafter provided, and such assessment is collectible by and in the name of said corporation, in any court of law in the State of California having jurisdiction, in

such manner and at such time or times as said corporation may determine. In order to provide for the payment of persons employed by said corporation, and to maintain suitable rooms, and apparatus for saving life and property contemplated, said corporation is empowered to require a statement to be furnished, semi-annually, by all insurance companies, corporations, associations, underwriters, agents, or persons, of the aggregate amount of premiums received for insuring property in the municipality where said corporation is organized or established, for and during the six months next preceding the first day of July and the first day of January of each year, which statement must be sworn to by the president or secretary of the corporation or association, or by the agent or person so acting or effecting such insurance in said municipality, and must be handed to the secretary of said corporation heretofore created or hereafter to be created under the provisions of this chapter within ten days after the first day of July and the first day of January of each year. Said secretary must, within the ten days aforesaid, by written or printed demand signed by him, require from every insurance company, corporation, association, underwriter, agent, or person engaged in the business of fire insurance in the municipality where said corporation is organized or established, the statement hereinbefore provided for. Such demand may be delivered personally at the office of such insurance company, corporation, association, underwriter, agent, or person within said municipality, and every officer of such insurance company, corporation, association, and every such underwriter, agent, or person, who, for fifteen days after said demand, neglects to render the statement herein provided for, forfeits fifty dollars for the use of said corporation, and also forfeits for its use twenty-five dollars in addition for every day he so neglects after the expiration of the said fifteen days, and such additional penalty may be computed and collected up to the time of the trial of any action brought for the recovery thereof. The penalty herein provided for may be sued for and collected, with costs, in any court of law within the State of California having jurisdiction, by and in the name of said corporation. En. Stats. 1905, 572.

See note to § 453a, ante.

Civil Code—5

DIVISION FIRST.

PART IV.

TITLE II.

CHAPTER VI.

New chapter added March 20, 1905. Stats. 1905, 418.

LIFE, HEALTH, ACCIDENT, AND ANNUITY OR ENDOWMENT INSURANCE ON THE ASSESSMENT PLAN.

- § 453d. Contracts which may be made by, defined.
- § 453e. Formation of corporations; issuing of contracts; investments.
- § 453f. Pre-existing corporations, right of to reincorporate.
- § 453g. Contracts of insurance, contents and effect of.
- § 453h. Reserve and emergency fund.
- § 453i. Foreign corporations, conditions precedent to doing business in this state.
- § 453j. Limitations upon right to issue contracts of insurance.
- § 453k. Exemptions from attachment and execution.
- § 453l. Statements to be filed with the insurance commissioner; proceedings to be taken by him thereon.
- § 453m. Lapsing of policies when forbidden.
- § 453n. Fees and penalties.
- § 453o. Insurance commissioner to present bills for certain expenses.
- § 453p. Exemption of fraternal societies from this chapter.

§ 453d. Contracts which may be made by, defined. Every contract whereby a benefit may accrue to a party or parties therein named upon the death or physical disability of a person insured thereunder, or for the payment of any sums of money dependent in any degree upon the collection of

assessments or dues from persons holding similar contracts, is deemed a contract of mutual insurance upon the assessment plan. Such contracts must show that the liabilities of the insured thereunder are not limited to fixed premiums. En. Stats. 1905, 418.

453d, 453e, 453f, 453g, 453h, 453i, 453j, 453k, 453l, 453m, 453n, 453o, 453p. The above sections are a codification of the statute of 1891, page 126, relating to life, health, accident, and annuity or endowment insurance on the assessment plan. They are placed in a new chapter, entitled "Life, Health, Accident and Annuity or Endowment Insurance on the Assessment Plan."—Code Commissioner's Note.

§ 453e. Formation of corporations; issuing of contracts; investments. Corporations may be formed to carry on the business of mutual insurance upon the assessment plan, and are subject only to the provisions of this chapter. No such corporation must issue contracts of insurance until at least two hundred persons have applied, in writing, for membership or insurance therein, and have paid to the treasurer of such corporation the sum of five thousand dollars. This sum must be invested in bonds or securities, approved by the insurance commissioner of this state, or deposited in some bank in this state where it will earn interest. Said bonds or securities, or evidences of such deposit, must be placed, through the insurance commissioner of this state, with the state treasurer, and the principal sum must be held in trust for the contract-holders of such corporation, with the right in the corporation to exchange said bonds, securities, or evidence of bank deposit for others of like value. Such corporation must also, as a condition precedent to issuing any contracts of insurance, obtain the written certificate of the insurance commissioner that it has complied with the requirements of this chapter; and that the name of the corporation is not the same as that of any other corporation of this or other states, as indicated by the insurance department reports in his office; nor must the commissioner approve any name or title so closely resembling another as to mislead the public. No corporation formed hereunder has legal existence after one year from the date of its articles, unless its organization has been completed and business commenced; nor must any corporation or individual solicit, or cause to be solicited, any business, until such corporation has complied with the provisions of section six hundred and thirty-three

of the Political Code. Nothing contained in this chapter shall be construed to exempt any corporation from the provisions of sections two hundred and ninety-six and two hundred and ninety-nine of this code. En. Stats. 1905, 418.

See note to § 453d, ante.

§ 453f. Pre-existing corporations, right of to reincorporate. Any existing corporation engaged in the business of life, health, accident, or endowment insurance on the assessment plan may reincorporate under the provisions of this code and chapter, but is not obliged to do so, and may, without such reincorporation, exercise the rights, powers, and privileges conferred by this chapter. En. Stats. 1905, 419.

See note to § 453d, ante.

§ 453g. Contracts of insurance, contents and effect of. Every contract of insurance issued by such corporation must specify the sum or sums to be paid upon the happening of the contingency insured against, and when such payments must be made. Unless the contract is invalidated by fraud or by breach of its conditions, the corporation is obligated to pay the beneficiary the amount or amounts specified in its contract at the time or times therein named, and such indebtedness is a lien upon all the property of such corporation, with priority over all indebtedness thereafter incurred, except as hereinafter provided in case of insolvency. Failure to make such payment, within thirty days after notice, at the home office, by mail, as provided by law, of a final judgment, unless waiver is made by the beneficiary, constitutes a forfeiture of the right to do business. En. Stats. 1905, 419.

See note to § 453d, ante.

§ 453h. Reserve and emergency fund. Every domestic corporation, organized to do or doing the business of insurance on the assessment plan, must accumulate a reserve or emergency fund, which must, at all times, be not less than the largest benefit contracted to be paid by it to any one person. Every corporation organized under the provisions of this chapter must accumulate such fund within a year from the date of its certificate of incorporation. Such fund, to the extent of the largest amount contracted to be paid by any such corporation to any one person, must be invested

and deposited, as provided in section four hundred and fifty-three *c*, with the right in the corporation to exchange any such securities for others of equal value. The deposit required by section four hundred and fifty-three *c* constitutes a part of the reserve required by this section, at the option of such corporation. When any such corporation discontinues business, this fund must be returned to such corporation, or disposed of as may be determined by the superior court of the county in which is its principal place of business. En. Stats. 1905, 419.

See note to § 453*d*, ante.

§ 453*i*. **Foreign corporations, conditions precedent to doing business in this state.** Corporations organized under the laws of any other state or country to transact the business of mutual assessment insurance must, as a condition precedent to transacting business in this state, comply with the provisions of sections four hundred and five and four hundred and eight of this code, and deposit with the insurance commissioner of this state a certified copy of its charter or other instrument required by its home authorities; a statement under oath, of its president or secretary, of its business for the preceding year, in such form as may be required by the insurance commissioner of this state; an appointment of a general agent, service upon whom binds the corporation; a certificate that for the next preceding twelve months it has paid in full the maximum amount named in its contract of insurance; a certificate from the proper officer of its state or government that like corporations of this state are legally entitled to do business in such state or country; copies of its contracts of insurance and applications, which must show that the liabilities of its members are not limited to fixed premiums; and evidence, satisfactory to the insurance commissioner, that the corporation has accumulated a fund equal to that required of like corporations in this state, constituting a reserve or surplus fund, held in trust for the benefit of its contract-holders, and so invested and held as required by the laws of the state or government under which such corporation was organized. The insurance commissioner must thereupon issue a license to such corporation to do business in this state. This license must be renewed annually, and may be revoked whenever it is ascertained that the statements required to be made by this section are not

true. Upon such revocation, notice thereof must be given by the insurance commissioner by publication in some newspaper published in the city and county of San Francisco, for two weeks, daily, and no new contracts must be made by such company in this state. When any other state or country imposes any additional license, fees, taxes, or penalties upon any corporation organized or doing business under this chapter, like license, fees, taxes, or penalties are imposed upon corporations of the same kind and their agents of such state or country doing business in this state. En. Stats. 1905, 419.

See note to § 453d, ante.

§ 453j. Limitations upon right to issue contracts of insurance. No corporation doing business under this chapter, except accident or casualty corporations, must issue a contract of insurance upon the life of any person under fifteen nor over sixty-one years of age. Every such contract of insurance must be founded upon written application therefor, and, except where the application is for health, accident, or casualty insurance only, or for one hundred dollars life insurance or less, such application must be accompanied by the report of a reputable physician, containing a detailed statement of his examination of the applicant, showing the applicant to be in good health, and recommending the issuance of a contract of insurance. Any solicitor, agent, employé, examining physician, or other person, making a false or fraudulent statement to any corporation doing business under this chapter, with reference to any application for insurance, or for the purpose of obtaining any money or benefit from such corporation, is guilty of a misdemeanor; and any person who makes a false statement of any material fact or thing in a sworn statement as to the death or disability of a contract-holder, in any such corporation for the purpose of procuring or aiding the beneficiary or beneficiaries or contract-holder in procuring the payment of a benefit named in the contract, is guilty of perjury. En. Stats. 1905, 420.

See note to § 453d, ante.

§ 453k. Exemptions from attachment and execution. The money, benefit, annuity, endowment, charity, relief, or aid to be paid as provided by the contracts issued by any corporation doing business under this chapter, is not liable to attachment or other process, nor to be seized, taken, appro-

propriated, or applied by any legal or equitable process, nor by operation of law, to pay any debts or liability of the contract-holder or any beneficiary named thereunder. En. Stats. 1905, 421.

See note to § 453d, ante.

§ 453l. Statements to be filed with the insurance commissioner; proceedings to be taken by him thereon. Every corporation, whether domestic or foreign, doing the business of effecting insurance on the assessment plan must, annually, on or before the first day of February, file with the insurance commissioner, in such form as he may prescribe, a statement of its affairs for the year ending on the preceding thirty-first day of December. The insurance commissioner, in person or by duly authorized deputy, has the power of examination into the affairs of any domestic corporation doing business or claiming to do business under this chapter, at any time, in his discretion, and must make such examination at least once a year. If he, after an examination of the affairs of a corporation, finds that it is not doing its business, in conformity to this chapter, or that it is doing a fraudulent or unlawful business, or that it is not carrying out its terms of contract, or that it cannot, within three months from the date of notice of default, pay its obligations, he must cite the president, secretary, manager, or general agent of the corporation, or all of them, to appear before him, stating the time and place, to show cause why the authority of the corporation to do business should not be revoked, and if cause is not shown, then he must report the facts to the attorney-general of the state, who must commence proceedings in the proper court to restrain the corporation from doing any further business. En. Stats. 1905, 421.

See note to § 453d, ante.

§ 453m. Lapsing of policies when forbidden. No policy or certificate issued by any corporation or association doing business under the provisions of this chapter lapses for the nonpayment of any assessments, dues, or premiums, unless the corporation or association has first mailed to the insured under such policy or certificate, at his or her last given post-office address, a notice setting forth the amount to be paid, and the time the same is due and payable; and such notice must be mailed at least fifteen days before the assessment

is due; *provided*, that such corporations doing business under this chapter as collect specific amounts at specific dates, as contained in the contract, are not compelled to send such notices; and an affidavit made by the officer, bookkeeper, or clerk of any such corporation having charge of the mailing of notices, setting forth the facts as they appear on the records in the office of the said corporation, showing that such notice was mailed and the date of mailing, is conclusive evidence of the mailing of such notice. En. Stats. 1905, 421.

See note to § 453*d*, ante.

§ 453*n*. **Fees and penalties.** The fees for filing statements, certificates, or other documents required by this chapter, or for any service or act of the insurance commissioner, and the penalties for any violation of this chapter, must, except as otherwise provided herein, be the same as provided in the laws of this state relating to life insurance companies, and must be disposed of as provided by such laws. En. Stats. 1905, 422.

See note to § 453*d*, ante.

§ 453*o*. **Insurance commissioner to present bills for certain expenses.** For all lawful expenses under this chapter, or by reason of any of its provisions, in the prosecution of any suit or proceeding, or otherwise, for the enforcement of the provisions of this chapter, the insurance commissioner must present bills, duly certified by him, and accompanied with vouchers, to the state board of examiners, who may allow the same, and direct payment thereof to be made; and the state controller must draw warrants therefor on the state treasurer for the payment of the same to the insurance commissioner, out of the general fund, in addition to the ordinary contingent expense. En. Stats. 1905, 422.

See note to § 453*d*, ante.

§ 453*p*. **Exemption of fraternal societies from this chapter.** The provisions of this chapter do not apply to secret or fraternal societies, lodges, or councils, which conduct their business and secure membership on the lodge system exclusively, having ritualistic work and ceremonies in their societies, lodges, or councils, nor to any mutual or benefit association organized or formed and composed of members of any such society, lodge, or council exclusively. En. Stats. 1905, 422.

See note to § 453*d*, ante.

§ 465. Supp. Cal. Rep. Cit. Subd. 5—142, 392. Subd. 8—142, 392. Subd. 9—142, 392. Subd. 11—142, 392.

§ 465a. Corporations, railroad, what motive power may be used; authority must be obtained. Every person or corporation now or hereafter authorized to operate a railroad by steam motive power, is also authorized to use electricity or compressed air, or both, either with or without such steam, for the purpose of propelling cars or trains on such railroad or upon any portion thereof. In incorporated cities, towns, or cities and counties having more than five thousand inhabitants, authority must be obtained from the legislative authority thereof. En. Stats. 1905, 574.

465a. This section is a codification of the statute of 1893, page 208, relating to the operation of railroads.—Code Commissioner's Note.

§ 468. Construction of road must be commenced and continued; operation. Every railroad corporation must, within two years after filing its original articles of incorporation, begin the construction of its road, and must every year thereafter complete and put in full operation at least five miles of its road, until the same is fully completed; and upon its failure so to do, for the period of one year, its right to extend its road beyond the point then completed is forfeited. After the completion of any railroad, or any part thereof, capable of being operated, its owner must operate it, and upon his failure to keep it, or any part thereof, in full operation for the period of six months, his right to operate it in whole or in part, as the case may be, is forfeited, and the lands occupied for the purposes of the road, so far as the same is not operated, revert to the original owners or their successors in interest. A railroad is in full operation when one passenger train, or one mixed train, is run over it once a day in each direction and a sufficient number of freight trains to accommodate the traffic on the road. If a railroad is wholly constructed at an elevation of five thousand feet or more above the level of the sea, its owner is not required to maintain and operate it, nor to run passenger or other trains thereon, between the fifteenth of October of any year and the fifteenth of May of the year following. This section must not be construed to require the operation of a road when prevented by the act of God, nor when the operation

of the road, together with its branch and trunk lines, does not yield income sufficient to defray the expenses of maintaining and operating it in connection with its branch and trunk lines. The railroad commissioners have the power to examine and determine whether a railroad, together with its branch and trunk lines, yields income sufficient to operate the same. En. March 21, 1872. Am'd. 1905, 574.

468. The amendment consists in codifying and adding to the section the provisions of the statute of 1880, page 43, to compel the operation of railroads, and of the statute of 1897, page 5, to provide for the management and operation of railroads above certain elevations.—Code Commissioner's Note.

§ 473a. Right to lease or use another road in common. Railroad corporations doing business in this state and organized under any law of this state or the United States, or of any state or territory thereof, have power to enter into contracts with one another, whereby the one may lease of the other the whole or any part of its railroad, or may acquire of the other the right to use, in common with it, the whole or any part of its railroad. En. Stats. 1905, 575.

- 473a. Section 2 of the statute of 1880, page 21, authorizing railway and other corporations organized under the laws of this state or of any state or territory of the United States to do business in this state, on equal terms, is codified in this section.—Code Commissioner's Note.

§ 481. Time of running cars fixed by public notice; sufficient accommodations to be furnished. Every such corporation must start and run its cars, for the transportation of persons and property, at such regular times as it shall fix by public notice, and must furnish sufficient accommodations for the transportation of all such passengers and property as, within a reasonable time previous thereto, offer or are offered for transportation, at the place of starting, at the junction of other railroads, and at siding and stopping-places established for receiving and discharging way passengers and freight; and must take, transport, and discharge such passengers and property at, from, and to such places, on the due payment of tolls, freight, or fare therefor. En. March 21, 1872. Am'd. 1905, 575.

Supp. Cal. Rep. Cit. 142, 392.

481. The amendment consists in the substitution of the word "its" for "their," and the substitution of "it" for "they," thus correcting errors of grammar.—Code Commissioner's Note.

§ 482. Supp. Cal. Rep. Cit. 142, 592.

§ 485. Supp. Cal. Rep. Cit. 141, 289.

§ 487. Supp. Cal. Rep. Cit. 145, 452.

§ 489. Rates of charges established by railroad commissioners. Whenever the board of railroad commissioners, in the discharge of its duties, establishes or adopts rates of charges for the transportation of passengers and freight, pursuant to the provisions of the constitution, said board must serve a printed schedule of such rates, and of any changes that may be made in such rates, upon the person, copartnership, company, or corporation affected thereby; and upon such service it is the duty of such person, copartnership, company, or corporation to immediately cause copies of the same to be posted in all its offices, station houses, warehouses, and landing offices affected by such rates, or change of rates, in such manner as to be accessible to public inspection during usual business hours. Said board must also make such further publication thereof as it deems proper and necessary for the public good. If the party to be served is a corporation, such service may be made upon the president, vice-president, secretary, or managing agent thereof, and if a copartnership, upon any partner thereof. The rates of charges established or adopted by said board, pursuant to the constitution and the laws of this state, must go into force and effect on the twentieth day after service of such schedule of rates, or changes in rates, upon the person, copartnership, company, or corporation affected thereby. En. March 21, 1872. Am'd. 1905, 575.

489. Section 11 of the statute of 1880, page 47, defining the powers of the board of railroad commissioners, is substituted in place of the present section 489. The section has been inoperative since the adoption of the Constitution of 1879. Code Commissioner's Note.

§ 490. Supp. Cal. Rep. Cit. 144, 188.

§ 493. Law to apply to. The provisions of section four hundred and ninety-two shall apply to any railway corporation heretofore or hereafter incorporated. En. Stats. 1895, 242. Am'd. 1905, 576.

493. The change consists in the substitution of the words "section four hundred and ninety-two" in place of "act."—Code Commissioner's Note.

The section 492 referred to in this section provided for the granting of franchises to construct elevated or underground roads.

§ 494. En. Stats. 1899, 178. Rep. 1905, 576.

494. In 1899 a section relating to the sale of railroads was added to the Code, and numbered 494. In 1903 a new section was added, also numbered 494, and clearly intended to supersede the old section 494. Accordingly, it is thought advisable to repeal the earlier section.—Code Commissioner's Note.

§ 497. Supp. Cal. Rep. Cit. 142, 228.

§ 513. Survey and map of road filed with supervisors; survey, if approved. When the route is surveyed a map thereof must be submitted to and filed with the board of supervisors of each county through or into which the road runs, giving its general course, and the principal points to or by which it runs, and its width, which must in no case exceed one hundred feet, and the supervisors must either approve or reject the survey. If approved, it must be entered of record on the journal of the board, and such approval authorizes the use of all public lands and highways over which the survey runs; but the board of supervisors must require the corporation, at its own expense, and the corporation must so change and open the highways so taken and used as to make the same as good as before the appropriation thereof; and must so construct all crossings of public highways over and by its road and toll gates, as not to hinder or obstruct the use of the same. En. March 21, 1872. Am'd. 1905, 577.

513. The change consists in the omission of the words "they were" before the word "before." The omission does not change the meaning of the section.—Code Commissioner's Note.

§ 514. Bridges or ferries on line of; tolls; franchises forfeited, when. All wagon road corporations may bridge or keep ferries on streams on the line of their road, and must do all things necessary to keep the same in repair. They may take such tolls only on their roads, ferries, or bridges, as are fixed by the board of supervisors of the proper county through which the road passes, or in which the ferry or bridge is situate. But in no case must the tolls be more

than sufficient to pay fifteen per cent, nor less than ten per cent per annum, on the cost of construction, after paying for repairs and other expenses for attending to the roads, bridges, or ferries. If tolls, other than as herein provided, are charged or demanded, the corporation forfeits its franchise, and must pay to the party so charged one hundred dollars as liquidated damages. En. March 21, 1872. Am'd. 1873-4, 214; 1873-4, 272; 1905, 577.

514. The change consists in the omission of that part of the section excepting from its operation the counties of Butte, Del Norte, Humboldt, Klamath, Plumas, and Sierra.—Code Commissioner's Note.

§ 517. Persons detained until toll is paid. Each toll-gatherer may prevent from passing through his gate any person, animal, or vehicle, subject to toll, until the toll authorized to be collected for such passing has been paid. En. March 21, 1872. Am'd. 1905, 577.

517. The section as it now stands authorizes the toll-gatherer to prevent from passing through his gate persons leading or driving animals or vehicles subject to toll. The form of the section has been changed to express what was doubtless originally intended by the legislature.—Code Commissioner's Note.

§ 518. Persons unnecessarily detained or overcharged, damages. Every toll-gatherer who, at any gate, unreasonably hinders or delays any traveler or passenger or any vehicle or animal liable to the payment of toll, or demands or receives from any person more than he is authorized to collect, for each offense forfeits the sum of twenty-five dollars to the person aggrieved. En. March 21, 1872. Am'd. 1905, 578.

518. The change consists in the insertion of the words "or any vehicle or animal" after "passenger."—Code Commissioner's Note.

§ 522. Property may be mortgaged or hypothecated. The corporation may mortgage or hypothecate its road and other property for funds with which to construct or repair its road, but no mortgage or hypothecation is valid or binding unless at least twenty-five per cent of the capital stock subscribed has been paid in and invested in the construction of the road and appurtenances, and then only after an

affirmative vote of two thirds of the capital stock subscribed. En. March 21, 1872. Am'd. 1905, 578.

522. The change consists in the substitution of the word "its" in place of "their," thus correcting an error of grammar.—Code Commissioner's Note.

§ 524. Franchises granted for construction of roads for use of horseless vehicles. The legislative or other body to whom is intrusted the government of any county, city and county, city, or town, may, under such regulations, restrictions, and limitations as it may provide, subject to existing laws, grant franchises for the construction of paths and roads, either on the surface, elevated, or depressed, on, over, across, or under the streets and public highways of any such county, city, or town, for the use of bicycles, tricycles, motorcycles, and other like horseless vehicles, for a term not exceeding fifty years. In incorporated cities no franchise must be granted for the purpose herein expressed, unless the consent in writing of the owners of a majority of the frontage upon the road or street along which said path or road is sought to be constructed, is first had and obtained, and filed with such legislative or governing body. En. Stats. 1905, 578.

524. The statute of 1897, page 191, authorizing municipal corporations to construct paths and roads for the use of bicycles and other horseless vehicles, is codified in this section.—Code Commissioner's Note.

§ 528. Toll not be collected without authority. No corporation must construct, or take tolls on a bridge, ferry, wharf, chute, or pier until authority is granted therefor by the supervisors, or other governing body having authority in that behalf. En. March 21, 1872. Am'd. 1905, 579.

528. The change consists in the insertion of the words "or other governing body having authority in that behalf," after "supervisor."—Code Commissioner's Note.

§ 529. Corporate existence ceases, when. Every such corporation ceases to be a body corporate:

1. If, within six months from filing its articles of incorporation, it has not obtained such authority from the board of supervisors, or other governing body having authority in that behalf; and if, within one year thereafter, it has not commenced the construction of the bridge, wharf, chute, or

pier, and actually expended thereon at least ten per cent of the capital stock of the corporation;

2. If, within three years from filing the articles of incorporation, the bridge, wharf, chute, or pier is not completed;

3. If, when the bridge, wharf, chute, or pier of the corporation is destroyed, it is not reconstructed and ready for use within three years thereafter;

4. If the ferry of any such corporation is not in running order within three months after authority is obtained to establish it, or if at any time thereafter it ceases for a like term consecutively to perform the duties imposed by law. En. March 21, 1872. Am'd. 1905, 579.

529. The change consists in the insertion of the words "or other governing body having authority in that behalf," after "supervisors."—Code Commissioner's Note.

§ 530. Annual report to supervisors. The president and secretary of every bridge, ferry, wharf, chute, or pier corporation must annually, under oath, report to the board of supervisors, or other governing body having authority in that behalf, of the county in which the articles of incorporation are filed:

1. The cost of constructing and providing all necessary appendages and appurtenances for its bridge, ferry, wharf, chute, or pier;

2. The amount of all moneys expended thereon, since its construction, for repairs and incidental expenses;

3. The amount of its capital stock, how much paid in, and how much actually expended thereof;

4. The amount received during the year for tolls, and from all other sources, stating each separately;

5. The amount of dividends made, and the indebtedness of the corporation, specifying for what it was incurred;

6. Such other facts and particulars respecting the business of the corporation, as the board of supervisors or other governing body having authority in that behalf may require.

This report the president and secretary must cause to be published for four weeks in a daily newspaper published nearest the bridge, ferry, wharf, pier, or chute, if required by order of the board of supervisors or other governing body having authority in that behalf. A failure to make such report subjects the corporation to a penalty of two hundred dollars, and for every week permitted to elapse

after such failure an additional penalty of fifty dollars, payable in each case to the county from which the authority of the corporation was derived. All such cases must be reported by the board of supervisors, or other governing body having authority in that behalf, to the district attorney or city attorney, who must commence an action therefor. En. March 21, 1872. Am'd. 1905, 579.

530. The change consists in the insertion of the words "or other governing body having authority in that behalf," after "supervisors."—Code Commissioner's Note.

DIVISION FIRST.

PART IV.

TITLE VII.

Old title repealed and new title added March 20, 1905.
Stats. 1905, 492.

TELEGRAPH AND TELEPHONE CORPORATIONS.

- § 536. May use right of way along waters, roads, and highways.
- § 537. Liability for damaging telegraph or telephone property.
- § 538. Penalty for willfully or maliciously injuring telegraph or telephone property.
- § 539. Conditions on which damage to subaqueous cable may be recovered.
- § 540. May dispose of certain rights.
- § 536. May use right of way along waters, roads, and highways. Telegraph or telephone corporations may construct lines of telegraph or telephone lines along and upon any public road or highway, along or across any of the waters or lands within this state, and may erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and

at such points as not to incommode the public use of the road or highway or interrupt the navigation of the waters. En. March 21, 1872. Rep. 1905, 492. En. 1905, 492.

536, 537, 538, 539, 540. The change consists in the insertion of the words "or telephone" after the word "telegraph," thus including telephone companies within the operation of the above sections.—Code Commissioner's Note.

§ 537. Liability for damaging telegraph or telephone property. Any person who injures or destroys, through want of proper care, any necessary or useful fixture of any telegraph or telephone corporation, is liable to the corporation for all damages sustained thereby. Any vessel which, by dragging its anchor, or otherwise, breaks, injures, or destroys the subaqueous cable of a telegraph or telephone corporation, subjects its owner to the damages hereinbefore specified. En. March 21, 1872. Rep. 1905, 492. En. 1905, 492.

See note to § 536, ante.

§ 538. Penalty for willfully or maliciously injuring telegraph or telephone property. Any person who willfully and maliciously does any injury to any telegraph or telephone property, mentioned in the preceding section, is liable to the corporation for one hundred times the amount of actual damages sustained thereby, to be recovered in any court of competent jurisdiction. En. March 21, 1872. Rep. 1905, 492. En. 1905, 492.

See note to § 536, ante.

§ 539. Conditions on which damage to subaqueous cable may be recovered. No telegraph or telephone corporation can recover damages for the breaking or injuring of any subaqueous telegraph or telephone cable, unless such corporation has previously erected on either bank of the waters under which the cable is placed, a monument, indicating the place where the cable lies, and publishes for one month in some newspaper most likely to give notice to navigators, a notice giving a description and the purpose of the monuments, and the general course, landings, and termini of the cable. En. March 21, 1872. Rep. 1905, 492. En. 1905, 492.

See note to § 536, ante.

§ 540. May dispose of certain rights. Any telegraph or telephone corporation may at any time, with the consent of the persons holding two thirds of the issued stock of the corporation, sell, lease, assign, transfer, or convey any rights, privileges, franchises, or property of the corporation, except its corporate franchise. En. March 21, 1872. Rep. 1905, 492. En. 1905, 492.

See note to § 536, ante.

§ 549. Must furnish water for family use upon demand. All corporations formed to supply water to cities or towns must furnish pure fresh water to the inhabitants thereof, for family uses, so long as the supply permits, at reasonable rates and without distinction of persons, upon proper demand therefor; and must furnish water to the extent of their means, in case of fire or other great necessity, free of charge. The board of supervisors, or the proper city or town authorities, may prescribe proper rules relating to the delivery of water, not inconsistent with the laws of the state. En. March 21, 1872. Am'd. 1873-4, 216; 1905, 580.

549. The change consists in the omission of the two sentences following the word "charge," which are now a part of the section, said sentences having been superseded by the provisions of the Constitution of 1879, providing for the mode in which water rates shall be fixed.—Code Commissioner's Note.

§ 550. En. March 21, 1872. Rep. 1905, 580.

550. This section is an expression of the constitutional provisions found in the Constitution of 1849, respecting the right of corporations to use streets for laying water pipes.—Code Commissioner's Note.

§ 551. Construction of canal, etc. No canal, flume, or other appliance for the conducting of water must be so laid, constructed, or maintained as to obstruct any public highway; and every person or corporation owning, maintaining, operating, or using any such canal, flume, or appliance, crossing or running along any public highway, must construct, maintain, and keep in repair such bridges across the same as may be necessary to the safe and convenient use of such highway by the public; and on failure so to do, the board of supervisors of the county, after seven days notice in writing to said person or corporation, may construct or repair such bridge or bridges, and recover of such

person or corporation the amount of the expenditure made in so doing. En. March 21, 1872. Am'd. 1905, 580.

551. The design of the amendment is to better express the purpose of the present section and to remove the objections that it may be unconstitutional in investing the supervisors with an arbitrary power to require or not require bridges, and to supply the present defect in not providing any means of coercing the performance of the duty created.—Code Commissioner's Note.

§ 580. Corporations, banking; amount of capital stock required. No savings bank, or bank, or banking corporation, shall be incorporated in this state and conduct such banking business in a city or town of five thousand inhabitants or under with a capital stock of less than twenty-five thousand dollars, or in a city or town of over five thousand and not exceeding ten thousand inhabitants with a capital stock of less than fifty thousand dollars, or in a city or town of over ten thousand and not exceeding twenty-five thousand inhabitants with a capital stock of less than one hundred thousand dollars, or in a city or town of over twenty-five thousand inhabitants with a capital stock of less than two hundred thousand dollars. Before the secretary of state issues to any corporation that proposes to do a banking business his certificate of the filing of the articles of incorporation, there must be filed in his office the affidavit of the persons named in said articles as the first directors of the corporation, that all the capital stock has been actually and in good faith subscribed, and at least fifty per centum thereof paid, in lawful money of the United States, to a person in such affidavit named, for the benefit of the corporation. The remainder of the capital stock required by law must be paid in within two years after said banking corporation receives its certificate of incorporation, and if not so paid said banking corporation shall not be authorized to do business; *provided however*, that the provisions of this section shall not apply to corporations now in existence. En. Stats. 1903, 87. Am'd. 1905, 507.

§ 583b. Corporations, banking, must biennially report to bank commissioners statement of unclaimed deposits; publication of same. The president of every savings bank, savings and loan society, and every other bank, depository, society, or institution in which deposits of money are made, whether any interest or dividend is paid, or agreed to be

paid, thereon or not, must, within fifteen days after the first day of January of every odd-numbered year, return to the board of bank commissioners a sworn statement showing the amount placed to his credit, the last known place of residence or postoffice address, and the fact of death, if known to such president, of every depositor who has not made a deposit therein or withdrawn therefrom any part of his deposit, or any part of the interest or dividends thereon, for a period of more than ten years next preceding. Such president must give notice of these deposits in one or more newspapers published in or nearest the town, city, or county and county where such bank, society, or other institution is situated or has its principal place of business, at least once a week for four successive weeks, the cost of such publication to be paid pro rata out of such unclaimed deposits. This section does not apply to any deposit made by or in the name of a person known to the president to be living, or which, with the accumulation thereon, is less than fifty dollars. The board of bank commissioners must incorporate in their subsequent report each return made to them as provided in this section. Any president of any of the institutions mentioned in this section who neglects or refuses to make the sworn statement required thereby is guilty of a misdemeanor.

Sec. 2. The act entitled "An act to compel savings banks to publish a sworn statement of all unclaimed deposits," approved March 23, 1893, is hereby repealed.

Sec. 3. The act entitled "An act to compel all depositaries of money and commercial banks to publish a sworn statement of all unclaimed deposits" approved February 25, 1897, is hereby repealed. En. Stats. 1905, 581.

583b. This section is a codification of the statutes of 1893, page 183, and 1897, page 27, the only change made being in the provisions concerning the person who is to make the report. The original statute provided that the report should be made by the president or secretary. It has been thought best to impose the duty upon a single officer, so that it cannot be evaded by one officer, by his saying that it was the duty of the other, or that he had supposed the other had, or would, perform it.—Code Commissioner's Note.

DIVISION FIRST.

PART IV.

TITLE XI.

Old title repealed and new title substituted March 21, 1905.
Stats. 1905, 584.

MINING CORPORATIONS.

- § 585. Repealed.
- § 586. Transfer agencies.
- § 587. Stock issued at transfer agencies.
- § 587a. Consolidation of mining corporations.
- § 588. Books and balance sheets to be kept by secretary.
Stockholders' right to inspect.
- § 589. Right of stockholders to visit mine with expert.
- § 590. Liability of presidents and directors.

- § 585. En. March 21, 1872. Rep. 1905, 534.

§ 586. Transfer agencies. Any corporation organized in this state for the purpose of mining or carrying on mining operations in or without this state, may establish and maintain agencies in other states of the United States, for the transfer and issuing of their stock; and a transfer or issue of the same at any such transfer agency, in accordance with the provisions of its by-laws, is valid and binding as fully and effectually for all purposes as if made upon the books of such corporation at its principal office within this state. The agencies must be governed by the by-laws and the directors of the corporation. En. March 21, 1872. Rep. 1905, 584. En. 1905, 584.

Supp. Cal. Rep. Cit. 142, 392.

586, 587, 587a. Revises the whole of Title XI of Part IV of Division First of the Civil Code, respecting mining corporations. Sections 586 and 587 are not changed, but simply re-enacted. Section 587a contains substantially the matter now in section 361, the word "corporations" being substituted for "companies," and the words "and to cause

notice of the time and place fixed for such meeting to be mailed to each stockholder of each of such corporations at his last known place of residence or business at least ten days before the time fixed for such meeting" being inserted. The matter added is designed to provide the mode in which notices may be served on stockholders.—Code Commissioner's note.

§ 587. Stock issued at transfer agencies. All stock of any such corporation, issued at a transfer agency, must be signed by the president and secretary of the corporation, and countersigned at the time of its issue by the agent having charge of the transfer agency. No stock must be issued at a transfer agency unless the certificate of stock, in lieu of which the same is issued, is at the time surrendered for cancellation. En. March 21, 1872. Rep. 1905, 585. En. 1905, 585.

See note to § 586, ante.

§ 587a. Consolidation of mining corporations. It is lawful for two or more corporations formed, or that may hereafter be formed, under the laws of this state, for mining purposes, which own or possess mining claims or lands adjoining each other, or lying in the same vicinity, to consolidate their capital stock, debts, property, assets, and franchises, in such manner and upon such terms as may be agreed upon by the respective boards of directors or trustees of such corporations so desiring to consolidate their interests; but no such consolidation must take place without the written consent of the stockholders representing two thirds of the capital stock of each corporation, and no such consolidation can, in any way, relieve such corporations, or the stockholders thereof, from any and all just liabilities; and in case of such consolidation, due notice of the same must be given, by advertising, for one month, in at least one newspaper in the county where the said mining property is situated, if there is one published therein, and also in one newspaper published in the county where the principal place of business of any of said corporation is. And when the consolidation is completed, a certificate thereof, containing the manner and terms of such consolidation, must be filed in the office of the county clerk of the county in which the original certificate of incorporation of each of said corporations is filed, and a copy thereof must be filed in the office of the secretary of state; such certificate must be signed by

a majority of each board of trustees or directors of the original corporations, and it is their duty to call, within thirty days after the filing of such certificate, a meeting of the stockholders of all of said corporations so consolidated, to elect a board of trustees or directors for the consolidated corporation, for the year thence next ensuing; and to cause notice of the time and place fixed for such meeting to be mailed to each stockholder of each of such corporations at his last known place of residence or business at least ten days before the time fixed for such meeting. The said certificate must also contain all the requirements prescribed by section two hundred and ninety. En. Stats. 1905, 585.

See note to § 586, ante.

§ 588. Books and balance sheets to be kept by secretary; stockholders' right to inspect. It is the duty of the secretary of every corporation formed for the purpose of mining, or conducting mining in California, whether such corporation be formed and organized under the laws of the State of California or of any other state, territory, or foreign country, to keep at some place within the State of California an office and in such office to keep a complete set of books showing all receipts and expenditures of such corporation, the sources of such receipts, and the objects of such expenditures, and also all transfers of stock. All books and papers must, at all times during business hours, be open to the inspection of any stockholder. He is entitled to be accompanied by an expert, and to make copies or extracts from any such books or papers. He may, at reasonable hours, examine such mining property, accompanied by an expert, take samples, and make such other examination as he may deem necessary. It is the duty of the directors, on the second Monday of each and every month, to cause to be made an itemized account or balance sheet for the previous month, embracing a full and complete statement of all disbursements and receipts, showing from what sources such receipts were derived, and to whom and for what object or purpose such disbursements or payments were made; also all indebtedness or liabilities incurred or existing at the time, and for what the same were incurred, and the balance of money, if any, on hand. Such account or balance sheet must be verified under oath by the president and secretary, and posted in some conspicuous place in the office of the company. It is the duty of the superintendent,

on the first Monday of each month, to file with the secretary an itemized account, verified under oath, showing all receipts and disbursements made by him for the previous month, and for what said disbursements were made. Such account must also contain a verified statement showing the number of men employed under him, and for what purpose, and the rate of wages paid to each. He must attach to such account a full and complete report, under oath, of the work done in said mine, the amount of ore extracted, from what part of mine taken, the amount sent to mill for reduction, its assay value, the amount of bullion received, the amount of bullion shipped to the office of the company or elsewhere, and the amount, if any, retained by the superintendent. It is his duty to forward to the office of the company a full report, under oath, of all discoveries of ores or mineral-bearing quartz made in said mine, whether by boring, drifting, sinking, or otherwise, together with the assay value thereof. All accounts, reports and correspondence from the superintendent must be kept in some conspicuous place in the office of said company, open to the inspection of all stockholders. En. Stats. 1905, 585.

588, 589, 590. The statute of 1878-4, page 866, as amended in 1880, page 134, and 1897, page 38, is codified in the above sections, the only substantial change made being in the omission of the proviso in section 1 of the amendatory act of 1897, limiting its provisions to corporations "whose stock is listed and offered for sale at public exchange." The provisions of the part of the section omitted are unconstitutional. (See *Johnston v. Tautphaus*, 127 Cal. 604.) Code Commissioner's Note.

§ 589. Right of stockholders to visit mine with expert. Any stockholder of a corporation formed under the laws of this state for the purpose of mining, is entitled to visit, accompanied by his expert, and examine the mine or mines owned by such corporation, and every part thereof, at any time he may see fit; and when such stockholder applies to the president of such corporation, he must immediately cause the secretary thereof to issue and deliver to such applicant an order, under the seal of the corporation, directed to the superintendent, commanding him to show and exhibit such parts of said mine or mines as the party named in said order may desire to visit and examine. It is the duty of the superintendent, on receiving such order, to furnish such stockholder every facility for making a full and complete

inspection of said mine or mines, and of the workings therein, and to accompany said stockholder either in person, or to furnish some person familiar with said mine or mines to accompany him in his visit to and through such mine or mines, and every part thereof. If the superintendent fails to obey such order, such stockholder is entitled to recover, in any court of competent jurisdiction, against the corporation, the sum of one thousand dollars, and traveling expenses to and from the mine, as liquidated damages, together with costs of suit. In case of such refusal, it is the duty of the directors of the corporation forthwith to remove the officer so refusing, and thereafter he must not be employed directly or indirectly by the corporation, nor must any salary be paid to him. En. Stats. 1905, 586.

See note to § 588, ante.

§ 590. Liability of presidents and directors. In case of the refusal or neglect of the president to cause to be issued by the secretary the order mentioned in section five hundred and eighty-nine, such stockholder is entitled to recover against said president the sum of one thousand dollars and costs, as provided in the last section. If the directors fail to have the reports and accounts current made and posted as provided in section five hundred and eighty-eight, they are liable, either severally or jointly, to an action by any stockholder complaining thereof, and on proof of such refusal or failure, he may recover judgment for actual damages sustained by him, with costs of suit. Each of such defaulting directors is also liable to removal for such neglect. En. Stats. 1905, 587.

See note to § 588, ante.

DIVISION FIRST.

PART I.

TITLE XIa.

New title added March 21, 1905. Stats. 1905, 588.

CORPORATIONS FOR THE FORMATION OF CHAMBERS OF
COMMERCE, BOARDS OF TRADE, MECHANICS' INSTI-
TUTES, AND OTHER KINDRED ASSOCIATIONS.

- § 591. Formation, organization and powers of.
- § 592. Capital stock and certificates of.
- § 592a. Powers which may be conferred on the trustees, directors, or the executive committee.
- § 592b. Power to acquire, sell, possess, and use property.
- § 592c. The by-laws.
- § 592d. Power to levy and collect assessments.
- § 592e. Pre-existing corporations may become entitled to the benefit of this title.

§ 591. Formation, organization, and powers of. Corporations for the formation and organization of chambers of commerce, boards of trade, mechanics' institutes, and other associations formed for the extension and promotion of trade and commerce, or the advancement, protection, and improvement of the mechanic arts, may be formed by twenty or more persons, who must execute and file articles of incorporation as prescribed in chapter one of title one of part four of this code. Upon receiving from the secretary of state a certificate of the filing with him of a certified copy of its articles of incorporation, such corporation becomes a body corporate, and by its corporate name has succession for the period limited in its articles, and power: (1) To sue and be sued in any court; (2) to make and use a common seal, and alter it at pleasure; (3) to lease, purchase, hold, sell, mortgage, convey in trust, convey, release from trust or mortgage,

such real and personal property as hereinafter provided; (4) to elect and appoint such officers, agents, and servants as the business of the corporation may require; and (5) to make by-laws, not inconsistent with the laws of this state, providing for the organization of the corporation and the management of its affairs. No corporation formed under this title must engage in any mercantile, commercial, or mechanical business. En. Stats. 1905, 588.

591, 592, 592a, 592b, 592c, 592d, 592e. Adds a new title to the Code, designated "Corporations for the Formation of Chambers of Commerce, Boards of Trade, Mechanics' Institutes, and other Kindred Organizations," the matter contained in said chapter being a codification of the statute of 1865-6, page 469, as amended in 1867-8, page 5, and 1885, page 76, respecting chambers of commerce.—Code Commissioner's Note.

§ 592. Capital stock and certificates of. Every corporation formed under this title may have a capital stock and issue certificates to represent the shares thereof, if the articles of incorporation contain a statement of the amount of its capital stock and the number of shares into which it is divided. The rights and privileges to be accorded to stockholders are distinct from those to be accorded to members at large of the corporation, and the obligations to be imposed upon stockholders in the same relation must be fixed and established in the by-laws of the corporation. En. Stats. 1905, 588.

See note to § 591, ante.

§ 592a. Powers which may be conferred on the trustees, directors, or the executive committee. The corporation may confer upon a board of trustees or directors, or upon a body to be styled the executive committee of the corporation, the right to exercise all or any of the corporate powers, if the articles of incorporation state that the right to exercise the corporate powers is to be confided to such board of trustees or directors or to such executive committee, and the number of trustees, directors, or committee, and the names of those selected to take charge of the affairs of the corporation for the first six months. En. Stats. 1905, 588.

See note to § 591, ante.

§ 592b. Power to acquire, sell, possess, and use property. Every corporation formed under this title may lease, pur-

chase, have, hold, use, take possession of, and enjoy in fee simple or otherwise any personal or real property within the state necessary for the uses and purposes of the corporation, and may sell, lease, deed in trust, alien, or dispose of the same at its pleasure. En. Stats. 1905, 589.

See note to § 591, ante.

§ 592c. The by-laws. The by-laws of any corporation formed under this title without capital stock must prescribe how members of the corporation shall be admitted and how expelled, and how officers, agents, and servants shall be appointed. Such provisions in the by-laws have force and effect as between private parties and the corporation. All corporations formed under the provisions of this title must determine, by their by-laws, the manner of calling and conducting their meetings, the number of members that constitute a quorum, the manner of levying and collecting assessments, the officers of the corporation, the manner of their election or appointment and their tenure of office, and may prescribe suitable penalties for the violation of such by-laws, not exceeding in any case one hundred dollars for any one offense. En. Stats. 1905, 589.

See note to § 591, ante.

§ 592d. Power to levy and collect assessments. Every corporation formed under the provisions of this title has power to levy and collect, from the members thereof, for the purpose of paying the proper and legal expenses of the corporation, assessments in such manner as may be prescribed by its by-laws, but not otherwise. En. Stats. 1905, 589.

See note to § 591, ante.

§ 592e. Pre-existing corporations may become entitled to the benefit of this title. Every corporation, association, or institution formed prior to the enactment of this title, for any of the purposes contemplated thereby, may, by a vote of the majority of its members voting at a meeting called for that purpose, become entitled to the benefit thereof on filing the certificate hereinafter required. Notice of such meeting and of its object must be published in a newspaper of general circulation in the county in which the principal place of business of the corporation, association, or institution is located, for at least two weeks before the

day on which the meeting is to be held. Such certificate must be signed and acknowledged by at least five members of the corporation, association, or institution, must contain a list of the members who desire to become members, and must be filed with the county clerk of such county, and a copy thereof, certified by him, must be filed with the secretary of state. Thereupon such corporation, association, or institution possesses all the powers and privileges conferred by this title. En. Stats. 1905, 589.

See note to § 591, ante.

§ 593. Number of directors when formed other than for profit. Any number of persons associated together for any purpose, where pecuniary profit is not their object, and for which individuals may lawfully associate themselves, may, in accordance with the rules, regulations, or discipline of such association, elect directors, the number thereof to be not less than three nor more than twenty-one, and may incorporate themselves as provided in this part. En. March 21, 1872. Am'd. 1880, 6; 1905, 113.

§ 595. Amount of real estate to be owned by certain corporations. All such corporations may hold all the property of the association owned prior to incorporation, or acquired thereafter in any manner, and transact all business relative thereto; but no such corporation must own or hold more real estate than may be necessary for the business and objects of the association, and providing burial grounds for its deceased members, not to exceed six (6) whole lots in any city or town, nor more than fifty (50) acres in the country, the annual increase, income or profit, whereof must not exceed fifty thousand (\$50,000) dollars; *provided*, that any such corporation now or hereafter having, and having had continuously, for the next preceding three (3) years, the care, custody, control, and maintenance each year, upon an annual average of not less than one hundred (100) orphans, half orphans, and indigent minor children, at any one orphan asylum, shall be entitled and allowed to own and possess any number of acres not exceeding one hundred and sixty (160) acres of land in the country, outside of any incorporated city or town, and the annual income or profit of which does not exceed fifty thousand (\$50,000) dollars; *and provided further*, that the limitations herein provided for shall not apply to

corporations formed, or to be formed, under section six hundred and two (602) of the Civil Code, when the land is held or used for churches, hospitals, schools, colleges, orphan asylums, parsonages, or cemetery purposes or to corporations organized for social purposes and purposes of recreation and not for profit; *and provided further*, that the limitations herein provided for shall not apply to corporations organized other than for profit, when the land is timber land, and not exceeding one hundred and sixty (160) acres in extent, and is held or used for the purposes of the organizations, in which case said land shall be subject to all laws regulating the preservation of forests. En. March 21, 1872. Am'd. 1881, 9; 1899, 10; 1903, 136; 1905, 18.

§ 599. Supp. Cal. Rep. Cit. 142, 495.

DIVISION FIRST.

PART IV.

TITLE XIIa.

New title added March 21, 1905. Stats. 1905, 590.

SOCIETIES FOR THE PREVENTION OF CRUELTY TO CHILDREN AND ANIMALS.

- § 607. Formation of corporations.
- § 607a. Power of to receive and dispose of property.
- § 607b. Complaints for violating any law relating to children or animals.
- § 607c. Magistrates and police officers to aid the corporation and its officers.
- § 607d. Pre-existing corporations.
- § 607e. Fines, penalties, and forfeitures, and the disposition to be made thereof.
- § 607f. Members and agents may be authorized to act as police officers.
- § 607g. Children who may be arrested and brought before a court or magistrate for examination.

§ 607. Formation of corporations. Corporations may be formed by any number of persons not less than five, a majority of whom must be citizens and residents of this state, under the general provisions of this code, for the purpose of the prevention of cruelty to children or animals, or both. En. Stats. 1905, 590.

607, 607a, 607b, 607c, 607d, 607e, 607f, 607g. The subject-matter of the above sections is taken from the statute of 1878-4, page 499, as amended in 1901, page 285, and 1903, page 69—to prevent cruelty to animals; the statute of 1875-6, page 830, relating to the incorporation of societies for the prevention of cruelty to children; the statute of 1877-8, page 812, for the protection of children; and the statute of 1877-8, page 813, relating to children. Section 1 of the act of 1875-6, page 830, is codified in section 607. Subdivision 7 of section 2 of the same act is codified in section 607a, and section 3 in section 607b. Section 607c is a codification of section 4 of the act of 1875-6, page 830, and section 4 of the act of 1878-4, page 499. Section 5 of the act of 1875-6, page 830, is codified in section 607d; and section 14 of that act, as amended in 1903, page 69, and section 5 of the act of 1877-8, page 813, are consolidated and codified in section 607e. Section 5 of the act of 1878-4, page 499, as amended in 1901, page 285, is codified in section 607f, and section 3 of the act of 1877-8, page 812, is codified in section 607g, with the exception of subdivision 5 thereof, which is an addition thereto, to cover the matters referred to in the act of 1877-8, page 813.—Code Commissioner's Note.

§ 607a. Power of to receive and dispose of property. Every such corporation may take and hold, by gift, purchase, devise, or bequest, any property, real or personal, and dispose of the same at its pleasure; but it must not hold real property the annual income of which exceeds fifty thousand dollars. En. Stats. 1905, 590.

See note to § 607, ante.

§ 607b. Complaints for violating any law relating to children or animals. Any such corporation, or any member or officer thereof, may prefer a complaint against any person or persons, before any court or magistrate having jurisdiction, for the violation of any law relating to or affecting children or animals, and may aid in the prosecution of any such offender before such court or magistrate in any proceeding taken. En. Stats. 1905, 590.

See note to § 607, ante.

§ 607c. **Magistrates and police officers to aid the corporation and its officers.** All magistrates, constables, sheriffs, and officers of police must, as occasion may require, aid any such corporation, its officers, members, and agents, in the enforcement of all laws which are now or may be hereafter enacted relating to or affecting children or animals. En. Stats. 1905, 590.

See note to § 607, ante.

§ 607d. **Pre-existing corporations.** The provisions of this title extend to all corporations heretofore formed and existing for the prevention of cruelty to children or animals, but do not extend or apply to any association, society, or corporation which uses or specifies a name or style the same, or substantially the same, as that of any previously existing society or corporation in this state organized for a like purpose. En. Stats. 1905, 590.

See note to § 607, ante.

§ 607e. **Fines, penalties, and forfeitures, and the disposition to be made thereof.** All fines, penalties, and forfeitures imposed and collected in any county, or city and county, of this state under the provisions of any law of this state, now or hereafter enacted, relating to or affecting children or animals, in every case where the prosecution was instituted, aided, or conducted by any such corporation or society now or hereafter existing, must, except where otherwise provided, inure to such corporation or society in aid of the purposes for which it was incorporated or organized. In addition to said fines, penalties and forfeitures, every society incorporated and organized for the prevention of cruelty to animals may, in each city, or city and county, or county, where such society exists, while actively engaged in enforcing the provisions of the laws of this state, now or hereafter enacted, for the prevention of cruelty to animals, or arresting, or prosecuting offenders thereunder, or preventing cruelty to animals, be paid, as compensation therefor, from the county, or city and county general fund by the board of supervisors, a sum not exceeding one hundred and fifty dollars per month, in the same manner as other claims against said county, or city and county, are paid. En. Stats. 1905, 591.

See note to § 607, ante.

§ 607f. Members and agents may be authorized to act as police officers. All members and agents, and all officers of each or any of such corporations or societies, as may by the trustees thereof be duly authorized in writing, approved by a judge of the superior court of the county in which such corporation or society was organized, and sworn in the same manner as are constables or peace officers, have power lawfully to interfere to prevent the perpetration of any act of cruelty upon any child or dumb animal, and may use such force as is necessary to prevent the same, and to that end may summon to their aid any bystander; they may make arrests for the violation of any penal law relating to or affecting children or animals in the same manner as a constable or other peace officer; and may carry the same or similar weapons that such officers are authorized to carry. All such members and agents must, when making such arrests, exhibit and expose a suitable badge to be adopted by such corporation or society. All persons resisting such specially appointed officers, when performing any duty under this section, are guilty of a misdemeanor. En. Stats. 1905, 591.

See note to § 607, ante.

§ 607g. Children who may be arrested and brought before a court or magistrate for examination. Any child under the age of sixteen years that comes within any of the following descriptions named:

1. Who is found begging or receiving or gathering alms (whether actually begging, or under the pretext of selling or offering for sale anything), or being in any street, road, or public place for the purpose of so begging, gathering, or receiving alms;
2. Who is found wandering and not having any home or settled place of abode, or proper guardianship, or visible means of subsistence;
3. Who is found destitute, either being an orphan, or having a vicious parent who is undergoing penal servitude or imprisonment;
4. Who frequents the company of reputed thieves or prostitutes, or houses of prostitution or assignation, or dance houses, concert saloons, theaters, or variety halls, or other places of amusement where spirituous, malt, or vinous liquors are sold, without parent or guardian;

5. Who is engaged or used for or in any business, exhibition, vocation, or purpose, in violation of any law of this state;

—Must be arrested and brought before a court or magistrate, and when, upon examination before such court or magistrate, it appears that any such child has been engaged in any of the aforesaid acts, or comes within any of the aforesaid descriptions; or when, upon the examination or conviction of any person having the custody of a child, of a criminal assault upon it, the court or magistrate before whom such examination or conviction is had deems it desirable for the welfare of such child that the person so examined or convicted should be deprived of its custody thereafter; such court or magistrate, when it deems it expedient for the welfare of such child, may commit such child to an orphan asylum, corporation, or society for the prevention of cruelty to children, charitable or other institution, or make such other disposition thereof as now is or hereafter may be provided by law in cases of vagrant, truant, disorderly, pauper, or destitute children. Any corporation, organized under this title, or now existing, for the prevention of cruelty to children, or any officer or member thereof, may institute proceedings under this section for the welfare of any such child. En. Stats. 1905, 591.

See note to § 607, ante.

§ 608. Supp. Cal. Rep. Cit. 140, 232.

§ 609. Supp. Cal. Rep. Cit. 140, 232.

§ 610. Supp. Cal. Rep. Cit. 140, 232.

§ 611. Supp. Cal. Rep. Cit. 140, 232.

§ 612. Supp. Cal. Rep. Cit. 140, 232.

§ 613. Supp. Cal. Rep. Cit. 140, 232.

§ 614. Supp. Cal. Rep. Cit. 140, 232.

§ 615. Supp. Cal. Rep. Cit. 140, 232.

§ 616. Supp. Cal. Rep. Cit. 138, 557; 140, 232.

DIVISION FIRST.

PART IV.

TITLE XV.

Old title repealed and new title substituted March 21, 1905.
Stats. 1905, 593.

CORPORATIONS TO FURNISH LIGHT FOR PUBLIC USE.

§ 628. Repealed.

§ 629. Duty to furnish gas or electricity.

§ 630. When corporations may refuse to supply gas.

§ 630a. When corporations may refuse to supply electric current for light.

§ 631. Right to enter buildings for inspection.

§ 632. Right to shut off supply of gas or electricity.

§ 628. En. March 21, 1872. Rep. 1905, 592.

§ 629. **Duty to furnish gas or electricity.** Upon the application in writing of the owner or occupant of any building or premises distant not more than one hundred feet from any main, or direct or primary wire, of the corporation, and payment by the applicant of all money due from him, the corporation must supply gas or electricity as required for such building or premises, and cannot refuse on the ground of any indebtedness of any former owner or occupant thereof, unless the applicant has undertaken to pay the same. If, for the space of ten days after such application, the corporation refuses or neglects to supply the gas or electricity required, it must pay to the applicant the sum of fifty dollars as liquidated damages, and five dollars per day as liquidated damages for every day such refusal or neglect continues thereafter. En. March 21, 1872. Rep. 1905, 593. En. 1905, 593.

Supp. Cal. Rep. Cit. 141, 706; 141, 710; 141, 711; 141, 712.

629, 680, 630a, 631, 632. The purpose of the amendment is to make the above sections applicable to electric as well as to gas-light corporations. To accomplish this, the following changes have been made: In section 629 the words "or direct or primary wire" are inserted after "main," and the words "or electricity" are inserted in two places after "gas." Section 630a is a new section, to extend the provisions of the chapter "Electric Light Companies," and provide for advances similar to those made to gas companies by subscribers. In section 631 the words "any owner or manager of gas or electric works, or agent of such owner or manager, exhibiting written authority, signed by such owner or manager, or," are inserted at the beginning of the section; the words "or electric light" are inserted after "gas"; the words "or electricity" are inserted after "gas," and the words "or electric meters" are inserted after "meters." In section 632 the words "or electricity" are added after "gas" in three places, and the word "wires" is inserted after "pipes."—Code Commissioner's Note.

§ 630. When corporations may refuse to supply gas. No corporation is required to lay service pipe where serious obstacles exist to laying it, unless the applicant, if required, deposits in advance, with the corporation, a sum of money sufficient to pay the cost of laying such service pipe, or his proportion thereof. En. March 21, 1872. Rep. 1905, 593. En. 1905, 593.

See note to § 629, ante.

§ 630a. When corporations may refuse to supply electric current for light. No corporation is required to construct lines for the supply of electric current for light where serious obstacles exist, nor shall such corporation be required to supply such current from a direct wire at a distance too remote from the generating station, to insure a sufficient supply; nor is such corporation required to supply electric current for light from a primary wire carrying current of high voltage, unless the applicant deposit, in advance, a sum of money sufficient to pay the actual costs of such construction and for the appliances required to supply electric current with safety at the proper voltage. En. Stats. 1905, 593.

See note to § 629, ante.

§ 631. Right to enter buildings for inspection. Any owner, manager or superintendent of gas or electric light works, or agent of such owner, manager, or superintendent,

exhibiting written authority, signed by such owner, manager or superintendent, or any agent of a gas or electric light corporation exhibiting written authority signed by the president or secretary thereof for such purpose, may enter any building or premises lighted with gas or electricity supplied by such owner or corporation, to inspect the gas meters or electric meters therein to, ascertain the quantity of gas or electricity supplied or consumed. Every owner or occupant of such building who hinders or prevents such entry or inspection must pay to the owner or corporation the sum of fifty dollars as liquidated damages. En. March 21, 1872. Rep. 1905, 593. En. Stats. 1905, 593.

See note to § 629, ante.

§ 632. Right to shut off supply of gas or electricity. All gas or electric light corporations may shut off the supply of gas or electricity from any person who neglects or refuses to pay for the gas or electricity supplied, or the rent of any meter, pipes, wires, fittings or appliances, provided by the corporation, as required by his contract; and for the purpose of shutting off the gas or electricity in such case any employé of the corporation may enter the building or premises of such person, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon, of any day, and remove therefrom any property of the corporation used in supplying gas or electricity. En. March 21, 1872. Rep. 1905, 593. En. 1905, 594.

See note to § 629, ante.

Supp. Cal. Rep. Cit. 141, 706; 141, 708.

§ 634. Supp. Cal. Rep. Cit. 143, 258.

§ 638a. Withdrawal of stock, notice of. A stockholder desiring to withdraw from the association or to surrender a part or all of his stock may do so by giving thirty days' notice, in writing, of his intention. On the expiration of such notice, he is entitled to receive the full amount paid in upon the stock surrendered, together with such proportion of the earnings thereon as the by-laws may provide, or as may be fixed by the board of directors; but not more than one half of the monthly receipts in any one month must be applied to withdrawals for that month, without the consent of the board of directors, and no stockholder

must be permitted to withdraw whose stock is pledged to the association as security for a loan until such loan is fully paid. Such withdrawals must be paid in succession in the order that the notices of intention are given. En. Stats. 1905, 753.

638a. This section is a codification of section 19 of the statute of 1893, page 229.—Code Commissioner's Note.

§ 648½. En. Stats. 1891, 257. Rep. 1905, 753.

648½. This section is no longer necessary; the statute referred to therein to wit: that of 1877-8, page 955, having been repealed. (Stats. 1897, p. 243.)—Code Commissioner's Note.

DIVISION FIRST.

PART IV.

TITLE XIX.

Title added March 21, 1905. Stats. 1905, 594.

CO-OPERATIVE BUSINESS CORPORATIONS.

§ 653a. Purposes for which may be formed.

§ 653a. Purposes for which may be formed. Co-operative business corporations may be formed for doing any lawful business, and dividing a portion of their profits among persons other than their stockholders. Each of such corporations may, in its by-laws, in addition to the matters specified in section three hundred and three, provide the amount of profits which must be divided among persons other than its stockholders, and the manner in which and the persons among whom such division may be made. En. Stats. 1905, 594.

653a. This section is a codification of that part of the statute of 1877-8, page 883, defining co-operative corporations, and the section is placed in a new title designated "Co-operative Business Corporations." That part of the statute declar-

ing that the by-laws may provide for the number of votes to which each shareholder shall be entitled is omitted for the reason that it is special legislation, and probably unconstitutional within the decision in *Krause v. Durbrow*, 127 Cal. 681.—Code Commissioner's Note.

DIVISION FIRST.

PART IV.

TITLE XX.

Title added March 21, 1905. Stats. 1905, 595.

CO-OPERATIVE BUSINESS ASSOCIATIONS.

- § 653b. Formation and purposes of.
- § 653c. Rights, interests, and liabilities of members.
- § 653d. The articles of association.
- § 653e. The by-laws.
- § 653f. Execution against the association or its members.
- § 653g. Purpose of the association, how may be altered.
- § 653h. Powers of the association.
- § 653i. Consolidation of associations.
- § 653j. Dissolution and winding up of association.
- § 653k. Quo warranto to inquire into the right of an association to do business.
- § 653l. What corporations or associations are not affected by this title.

§ 653b. **Formation and purposes of.** Five or more persons may form a co-operative association for the transaction of any lawful business, whether for profit or not, or for the promotion of any educational, industrial, benevolent, social, or political purpose. Such association must not have any capital stock, but must issue membership certificates to each member. Such certificate cannot be assigned, so that the assignee can, by its transfer, become a member of the association, but, by a resolution of its board of directors, such certificate may be transferred, and the transferee made a

member in lieu of the last former holder. En. Stats. 1905, 595.

653b, 653c, 653d, 653e, 653f, 653g, 653h, 653i, 653j, 653k, 653l.

The statute of 1895, page 221, is codified in the above sections which are placed in a title designated "Co-operative Business Associations."—Code Commissioner's Note.

§ 653c. Rights, interests, and liabilities of members. In such association the rights and interests of all members are equal, and no member can have or acquire a greater interest therein than any other member has. At every election held pursuant to the by-laws each member must be entitled to cast one vote and no more. All persons above the age of eighteen years, regardless of sex, are eligible to membership, if otherwise qualified and elected as the by-laws may provide. The by-laws must provide for the amount of the indebtedness which such association may incur. And no member shall be responsible individually, or personally liable, for any of the debts or liabilities of the association in excess of his proportion of such indebtedness; but in case of the failure and insolvency of such association, may be required to pay any unpaid dues or installments which have, before such insolvency, become due from such member to the association, pursuant to its by-laws. En. Stats. 1905, 595.

See note to § 653b, ante.

§ 653d. The articles of association. Every association formed under this title must prepare articles of association, in writing, stating: The name of the association, the purpose for which it is formed, the place where its principal business is to be transacted, the term for which it is to exist, not to exceed fifty years, the number of the directors thereof, and the names and residences of those selected for the first year, the amount which each member is to pay upon admission as membership fee, and that each member signing the articles has actually paid in such sum, and that the interest and right of each member therein is to be equal. Such articles of association must be subscribed by the original associates or members, and acknowledged by each before some person competent to take an acknowledgment of a deed in this state. Such articles so subscribed and acknowledged must be filed in the office of the clerk of the county wherein the principal business of the association is to be transacted, and a copy thereof certified by such clerk, with the secretary

of state, who must thereupon issue his certificate in the form, and having the effect prescribed in section two hundred and ninety-six. En. Stats. 1905, 595.

See note to § 653b, ante.

§ 653e. **The by-laws.** Every association formed under this title must, within forty days after it so becomes an association, adopt a code of by-laws for the government and management of the association, not inconsistent with this title. A majority of all the associates is necessary to the adoption of such by-laws, and the same must be written in a book, and subscribed by the members adopting the same, and the same cannot be amended or modified except by the vote of a majority of all the members, after notice of the proposed amendment, given as the by-laws may provide. Such association may, by its by-laws, provide for the time, place, and manner of calling and conducting its meetings; the number of directors, the time of their election, their term of office, the mode and manner of their removal, the mode and manner of filling vacancies in the board caused by death, resignation, removal, or otherwise, and the power and authority of such directors, and how many thereof are necessary to the exercise of the powers of such directors, which must be at least a majority; the compensation of any of the directors, or of any officer; the number of the officers, if any, other than the directors, and their term of office; the mode of removal, and the method of filling a vacancy; the mode and manner of conducting business; the mode and manner of conducting elections, and may provide for voting by ballots forwarded by mail or otherwise, *provided*, the method secures the secrecy of the ballot; the mode and manner of succession of membership, and the qualifications for membership, and on what conditions, and when membership must cease, and the mode and manner of expulsion of a member, subject to the right of an expelled member to have the board of directors appraise his interest in the association in either money, property, or labor, as the directors may deem best, and to have the money, property, or labor so awarded him paid, or delivered, or performed within forty days after expulsion; the amount of membership fee, and the dues, installments, or labor which each member must be required to pay or perform, if any, and the manner of collection or enforcement, and for forfeiting or selling of membership interest for non-payment or nonperformance; the method, time, and manner

of permitting the withdrawal of a member, if at all, and how his interest must be ascertained, either in money or property, and within what time the same must be paid or delivered to such member; the mode and manner of ascertaining the interest of a member at his death, if his legal representatives or none of them desire to succeed to the membership, and whether the same must be paid to his legal representatives in money, or property, or labor, and within what time the same must be paid, or delivered, or performed; such other things as may be proper to carry out the purpose for which the association was formed. The by-laws must provide for the time and manner in which profits must be divided among the members, and what proportion of the profits, if any, must be added to the common property or funds of the association. But the by-laws may provide that the directors may suspend or pass the payment of any such profit, or installment of earnings, at their discretion. The by-laws and all amendments must be recorded in a book and kept in the office of the association, and a copy, certified by the directors, must be filed in the office of the county clerk where the principal business is transacted. En. Stats. 1905, 596.

See note to § 653b, ante.

§ 653f. Execution against the association or its members. The property of such association is subject to attachment and execution for its lawful debts. The interest of a member in such association, if sold upon execution, or any judicial or governmental order whatever, cannot authorize the purchaser to have any right, except to succeed, as a member in the association, with the consent of the directors, to the rights of the member whose interest is thus sold. If the directors choose to pay or settle the matter after such sale, they may either cancel the membership, and add the interest thus sold to the assets or common property of the association, or reissue the share or right to a new member upon proper payment therefor, as the directors may determine. En. Stats. 1905, 597.

See note to § 653b, ante.

§ 653g. Purpose of the association, how may be altered. The purpose of the business may be altered, changed, modified, enlarged, or diminished by a vote of two thirds of all the members, at a special election to be called for such pur-

pose, of which notice must be given the same as the by-laws provide for the election of directors. En. Stats. 1905, 597.

See note to § 653b, ante.

§ 653h. Powers of the association. Every association formed under this title has power of succession by its associate name for fifty years; in such name to sue and be sued in any court; to make and use a common seal, and alter the same at pleasure; to receive by gift, devise, or purchase, hold, and convey real and personal property, as the purposes of the association may require; to appoint such subordinate agents or officers as the business may require; to admit associates or members, and to sell or forfeit their interest in the association for default of installments, or dues, or work, or labor required, as provided by the by-laws; to enter into any and all lawful contracts or obligations essential to the transaction of its affairs, for the purpose for which it was formed, and to borrow money, and issue all such notes, bills, or evidences of indebtedness or mortgage as its by-laws may provide for; to trade, barter, buy, sell, exchange, and to do all other things proper to be done for the purpose of carrying into effect the objects for which the association is formed. En. Stats. 1905, 597.

See note to § 653b, ante.

§ 653i. Consolidation of associations. Two or more associations formed and existing under this title, or under any pre-existing law authorizing their formation for the same purposes, may be consolidated, upon such terms, and for such purposes, and by such name, as may be agreed upon, in writing, signed by two-thirds of the members of each such association. Such agreement must also state all the matters necessary to articles of association, and must be acknowledged by the signers before an officer competent to take an acknowledgment of deeds in this state, and be filed in the office of the county clerk of the county wherein the principal business of the association is to be transacted, and a certified copy thereof in the office of the secretary of state, and pay the same fees for filing and recording as required by this code for the filing and recording of the certified copy of the original articles of association; and from and after the filing of such certified copy, the former associations comprising the component parts cease to exist, and the consolidated association succeeds to all the rights, duties, and powers of the

component associations, and is possessed of all the rights, duties, and powers prescribed in the agreement of consolidated association not inconsistent with this title, and is subject to all the liabilities and obligations of the former component associations, and succeeds to all the property and interests thereof, and may make by-laws and do all things permitted by this title. En. Stats. 1905, 598.

See note to § 653b, ante.

§ 653j. Dissolution and winding up of association. Any association formed or consolidated under this title may be dissolved and its affairs wound up voluntarily by the written request of two thirds of the members. Such request must be addressed to the directors, and must specify reasons why the winding up of the affairs of the association is deemed advisable, and must name three persons who are members to act in liquidation and in winding up the affairs of the association, a majority of whom must thereupon have full power to do all things necessary to liquidation; and upon the filing of such request with the directors, and a copy thereof in the office of the county clerk of the county where the principal business is transacted, all power of the directors ceases and the persons appointed must proceed to wind up the association, and realize upon its assets, and pay its debts, and divide the residue of its money among the members, share and share alike, within a time to be named in said written request, or such further time as may be granted them by two thirds of the members, in writing, filed in the office of said county clerk; and upon the completion of such liquidation the said association must be deemed dissolved. No receiver of any such association, or of any property thereof, or of any right therein, can be appointed by any court, upon the application of any member, save after judgment of dissolution for usurping franchises at the suit of the State of California by its attorney-general. En. Stats. 1905, 598.

See note to § 653b, ante.

§ 653k. Quo warranto to inquire into the right of an association to do business. The right of any association claiming to be organized under this title to do business may be inquired into by quo warranto, at the suit of the attorney-general of this state, but not otherwise. En. Stats. 1905, 599.

See note to § 653b, ante.

§ 6531. What corporations or associations are not affected by this title. This title is not applicable to railroads, telegraph, telephone, banking, insurance, building and loan, or any other corporation, unless the special provisions of this code, applicable thereto, are complied with. En. Stats. 1905, 599.

See note to § 653b, ante.

§ 657. Supp. Cal. Rep. Cit. 142, 539.

§ 658. Supp. Cal. Rep. Cit. 140, 187; 142, 539, 144, 454.

§ 659. Supp. Cal. Rep. Cit. 140, 187; 142, 539.

§ 660. Supp. Cal. Rep. Cit. 139, 167; 140, 187; 142, 539.

§ 661. Supp. Cal. Rep. Cit. 142, 539.

§ 662. Supp. Cal. Rep. Cit. 140, 187; 142, 539.

§ 663. Supp. Cal. Rep. Cit. 142, 539.

§ 670. Supp. Cal. Rep. Cit. Subd. 1—145, 605.

§ 672. Supp. Cal. Rep. Cit. 143, 140; 143, 197; 143, 198.

§ 683. Supp. Cal. Rep. Cit. 141, 435.

§ 685. Supp. Cal. Rep. Cit. 141, 435.

§ 686. Supp. Cal. Rep. Cit. 141, 435.

§ 700. Supp. Cal. Rep. Cit. 141, 370.

§ 711. Supp. Cal. Rep. Cit. 141, 667.

§ 715. Supp. Cal. Rep. Cit. 144, 125; 144, 127.

§ 717. Supp. Cal. Rep. Cit. 141, 330.

§ 718. Supp. Cal. Rep. Cit. 141, 667.

§ 723. Supp. Cal. Rep. Cit. 144, 127.

§ 733. Supp. Cal. Rep. Cit. 139, 689.

§ 761. Supp. Cal. Rep. Cit. 142, 538.

§ 765. Supp. Cal. Rep. Cit. 142, 538; 142, 539.

§ 789. Supp. Cal. Rep. Cit. 140, 167.

§ 790. Supp. Cal. Rep. Cit. 140, 167.

§ 793. Possession of real property, action for, without notice. An action for the possession of real property leased or granted, with a right of re-entry, may be maintained at any time, after the right to re-enter has accrued, without the notice prescribed in section seven hundred and ninety-one. En. March 21, 1872. Am'd. 1905, 599.

793. The words "in the district court," where they occur in the present section, are omitted.—Code Commissioner's Note.

§ 822. Assignee of lessee, remedies of lessor against. Whatever remedies the lessor of any real property has against his immediate lessee for the breach of any agreement in the lease, or for recovery of the possession, he has against the assignees of the lessee, for any cause of action accruing while they are such assignees, except where the assignment is made by way of security for a loan, and is not accompanied by possession of the premises. En. March 21, 1872. Am'd. 1873-4, 219; 1905, 599.

822. A clerical error is corrected by inserting "has" after "property."—Code Commissioner's Note.

Supp. Cal. Rep. Cit. 144, 160.

§ 842. Obligations of owners of ditch, flume, etc.; liability of one to the other. When two or more persons are associated by agreement in the use of a ditch, flume, pipeline or other conduit for the conveyance of water, or who are using such ditch, flume, pipe-line or other conduit, or any part thereof, for the irrigation of land or for any other lawful purpose, to the construction of which they or their grantors have contributed, he is liable to the others for the reasonable expenses of maintaining and repairing the same, and of distributing such water in proportion to the share to which he is entitled in the use of the water. En. Stats. 1905, 600.

842, 843. The statute of 1889, page 202, relating to the protection of owners of ditches and flumes, is codified in the above sections. Section 3 of the statute is not codified for the reason that any matter in it which should be retained is fully covered by the general rules of law.—Code Commissioner's Note.

§ 843. Neglect to pay proportion of expense, liable therefor in an action. If any one of them neglects, after demand in writing, to pay his proportion of such expenses, he is liable therefor in an action for contribution, and in any judgment obtained against him interest from the time of such demand must be included. The action authorized by this section must be brought by any or all of the parties who have contributed more than his or their just proportion of such expenses, and may be joint or several, and therein plaintiff may recover as costs, reasonable counsel fees, to be fixed by the court. En. Stats. 1905, 600.

See note to § 842, ante.

§ 847. Supp. Cal. Rep. Cit. 140, 51.

§ 853. Supp. Cal. Rep. Cit. 142, 69; 144, 334; 144, 533.

§ 857. Supp. Cal. Rep. Cit. 140, 52.

§ 859. Supp. Cal. Rep. Cit. 139, 641.

§ 863. Supp. Cal. Rep. Cit. 143, 271.

§ 866. Supp. Cal. Rep. Cit. 142, 16.

§ 867. Supp. Cal. Rep. Cit. 142, 17.

§ 870. Supp. Cal. Rep. Cit. 139, 594; 145, 164.

§ 871. Supp. Cal. Rep. Cit. 145, 163.

§ 953. Supp. Cal. Rep. Cit. 143, 534; 144, 633.

§ 954. Supp. Cal. Rep. Cit. 144, 260; 144, 633.

§ 970. Rules of navigation. In the case of ships meeting, the following rules must be observed, in addition to those prescribed by that part of the Political Code which relates to navigation:

1. **Rules as to ships meeting each other.** Whenever any ship, whether a steamer or sailing ship, proceeding in one direction, meets another ship, whether a steamer or sailing ship, proceeding in another direction, so that if both ships were to continue their respective courses they would pass so near as to involve the risk of a collision, the helms of both ships must be put to port so as to pass on the port-side of each other; and this rule applies to all steamers and all sailing ships, whether on the port or starboard tack, and whether close-hauled or not, except where the circumstances of the case are such as to render a departure from the rule necessary in order to avoid immediate danger, and subject also to a due regard to the dangers of navigation, and, as regards sailing ships on the starboard tack close-hauled, to the keeping such ships under command;

2. **Rules as to sailing vessels.** In the case of sailing vessels, those having the wind fair must give way to those on a wind. When both are going by the wind, the vessel on the starboard tack must keep her wind and the one on the larboard tack bear up strongly, passing each other on the larboard hand. When both vessels have the wind large or abeam, and meet, they must pass each other in the same way on the larboard hand, to effect which two last-mentioned objects the helm must be put to port. Steam vessels must be regarded as vessels navigating with a fair wind, and should give way to sailing vessels on a wind of either tack;

3. **Rules for steamers in narrow channels.** A steamer navigating a narrow channel must, whenever it is safe and practicable keep to that side of the fairway or midchannel which lies on the starboard side of the steamer;

4. **Same.** A steamer when passing another steamer in such channel, must always leave the other upon the larboard side;

5. **Rules for steam vessels on different courses.** When steamers must inevitably or necessarily cross so near that by continuing their respective courses, there would be a risk of collision, each vessel must put her helm to port, so as always to pass on the larboard side of each other;

6. **Meeting of steamers.** The rules of this section do not apply to any case for which a different rule is provided by the regulations for the government of pilots of steamers approaching each other within the sound of the steam-whistle, or by the regulations concerning lights upon steamers, prescribed by or under authority of the laws of the United States. En. March 21, 1872. Am'd. 1905, 600.

970. The amendment consists in the substitution of the words "by or under authority of the laws of the United States" after "steamers," in place of the words "under authority of the acts of congress, approved August thirteenth, eighteen hundred and fifty-two and April twenty-ninth, eighteen hundred and sixty-four."—Code Commissioner's Note.

§ 992. Supp. Cal. Rep. Cit. 145, 388.

§ 993. Good will and name, transfer of. The good will of a business is property, transferable like any other, and the person transferring it may transfer with it the right of using the name under which the business is conducted. En. March 21, 1872. Am'd. 1905, 602.

993. The change consists in the addition of the words "and the person transferring it may transfer with it the right of using the name under which the business is conducted." The purpose of the amendment is to authorize the transfer of the right of using the name with the transfer of the good-will of the business.—Code Commissioner's Note.

§ 1007. Supp. Cal. Rep. Cit. 139, 525; 140, 388; 141, 501; 144, 27; 144, 344; 144, 594.

§ 1039. Supp. Cal. Rep. Cit. 145, 434.

§ 1040. Supp. Cal. Rep. Cit. 143, 533; 145, 434.

§ 1044. Supp. Cal. Rep. Cit. 145, 434.

§ 1045. Supp. Cal. Rep. Cit. 141, 370.

§ 1052. Supp. Cal. Rep. Cit. 144, 691.

§ 1053. Supp. Cal. Rep. Cit. 143, 536; 143, 649.

§ 1054. Supp. Cal. Rep. Cit. 143, 556.

§ 1069. Supp. Cal. Rep. Cit. 144, 37.

§ 1083. Supp. Cal. Rep. Cit. 143, 536; 145, 424.

§ 1084. Supp. Cal. Rep. Cit. 145, 424.

§ 1096. Conveyance of real estate when name of person has been changed. Any person in whom the title of real

estate is vested, who shall afterwards, from any cause, have his or her name changed, must, in any conveyance of said real estate so held, set forth the name in which he or she derived title to said real estate. En. Stats. 1905, 602.

1096. Section 1 of the statute of 1873-4, page 345, relating to conveyances of real estate, is codified in the above section. The rest of the statute should be added to section 4236 of the Political Code.—Code Commissioner's Note.

§ 1106. Supp. Cal. Rep. Cit. 141, 371.

§ 1113. Supp. Cal. Rep. Cit. 138, 624.

§ 1140. Supp. Cal. Rep. Cit. 145, 523.

§ 1146. Supp. Cal. Rep. Cit. 143, 536; 144, 294; 144, 296.

§ 1147. Supp. Cal. Rep. Cit. 143, 534; 144, 296.

§ 1161. **Acknowledgment of instrument to be recorded, by a person; by a corporation.** Before an instrument can be recorded, unless it belongs to the class provided for in either section eleven hundred and fifty-nine, eleven hundred and sixty, twelve hundred and two, or twelve hundred and three, its execution must be acknowledged by the person executing it, or if executed by a corporation, by its president or secretary, or other person executing the same on behalf of the corporation, or proved by a subscribing witness, or as provided in sections eleven hundred and ninety-eight and eleven hundred and ninety-nine, and the acknowledgment or proof certified in the manner prescribed by article three of this chapter. En. March 21, 1872. Am'd. 1873-4, 226; 1905, 602.

1161. The change consists in the substitution of the words "the person executing the same in behalf of the corporation" in place of "its president or secretary." The reason for the amendment is that an instrument may be executed on behalf of a corporation by an officer or person other than its president or secretary, when authorized by its board of directors. The section as it now stands appears to sanction its execution by those officers only.—Code Commissioner's Note.

§ 1163. **Certificate of residence filed with recorder, showing where service of summons may be made; fee; index.** Any person, firm, or corporation, may record in the office of the county recorder of any county in the State of Cali-

fornia a certificate setting forth the name of said person, firm, or corporation, and the place of residence of said person, firm, or corporation, and the place where service of summons may be made upon said person, firm, or corporation. The said certificate must be verified by the oath of the person, or of a member of the firm, or officer of the corporation making the same, and may be recorded without acknowledgment. Such person, firm or corporation may upon a change of place of residence file affidavit as herein provided and such last affidavit filed shall be the place designated as the place where service of summons may be made as herein provided. The fee of the recorder for recording said certificate shall be fifty cents; and the recorder shall keep in his office an index entitled "Index to Certificates of Residence," in which must be entered the name of the person, firm, or corporation in whose behalf said certificate was filed. En. March 21, 1872. Rep. 1873-4, 226. En. Stats. 1905, 139.

§ 1181. Proof or acknowledgment in this state, before whom taken. The proof or acknowledgment of an instrument may be made in this state, within the city, county, city and county, or township for which the officer was elected or appointed, before either:

1. A clerk of a court of record;
2. A county recorder;
3. A court commissioner;
4. A notary public;
5. A justice of the peace. En. March 21, 1872. Am'd. 1880, 2; 1891, 214; 1905, 603.

1181. The change consists in the substitution of the word "township" for "district" before "for."—Code Commissioner's Note.

§ 1185. Requisites for acknowledgments. The acknowledgment of an instrument must not be taken, unless the officer taking it knows or has satisfactory evidence, on the oath or affirmation of a credible witness, that the person making such acknowledgment is the individual who is described in and who executed the instrument; or, if executed by a corporation, that the person making such acknowledgment is the president or secretary of such corporation, or other person who executed it on its behalf. En. March 21, 1872. Am'd. 1905, 603.

1185. The change consists in the substitution of the words "person who executed it on behalf of the corporation," in place of "president or secretary of such corporation." (See note to section 1161.)—Code Commissioner's Note.

§ 1190. Form of acknowledgment by corporation. The certificate of acknowledgment of an instrument executed by a corporation must be substantially in the following form:

"State of _____,
County of _____. } ss.

"On this _____ day of _____, in the year _____, before me (here insert the name and quality of the officer), personally appeared _____, known to me (or proved to me on the oath of _____) to be the president (or the secretary) of the corporation that executed the within instrument (where, however, the instrument is executed in behalf of the corporation by some one other than the president or secretary, insert: known to me (or proved to me on the oath of _____) to be the person who executed the within instrument on behalf of the corporation therein named) and acknowledged to me that such corporation executed the same. En. March 21, 1872. Am'd. 1905, 603.

1190. The change consists in the substitution of the words "the person (or officer) who executed the within instrument on behalf of the corporation therein named," in place of the words "the president (or the secretary) of the corporation that executed the within instrument." (See note to section 1161.)—Code Commissioner's Note.

§ 1202. Instrument improperly certified, how corrected. When the acknowledgment or proof of the execution of an instrument is properly made, but defectively certified, any party interested may have an action in the superior court to obtain a judgment correcting the certificate. En. March 21, 1872. Am'd. 1905, 604.

1202. The change consists in the substitution of the word "superior" for "district," before "court."—Code Commissioner's Note.

§ 1203. Judgment proving acknowledgment. Any person interested under an instrument entitled to be proved for record, may institute an action in the superior court against the proper parties to obtain a judgment proving such instrument. En. March 21, 1872. Am'd. 1905, 604.

1203. The change consists in the substitution of the word "superior" in the place of "district," before "court."—Code Commissioner's Note.

§ 1213. Supp. Cal. Rep. Cit. 144, 35.

§ 1214. Supp. Cal. Rep. Cit. 144, 31; 144, 35; 145, 413.

§ 1215. Supp. Cal. Rep. Cit. 144, 35.

§ 1217. Supp. Cal. Rep. Cit. 144, 31; 145, 413.

§ 1218. **Recording of certified copies of instruments in writing.** A certified copy of an instrument affecting the title to real property once recorded may be recorded in any other county, and, when so recorded, the record thereof has the same force and effect as though it was of the original instrument. En. Stats. 1905, 604.

1218. This is a new section. It is self-explanatory.—Code Commissioner's Note.

§ 1237. Supp. Cal. Rep. Cit. 141, 649.

§ 1238. Supp. Cal. Rep. Cit. 144, 617.

§ 1239. Supp. Cal. Rep. Cit. 141, 462.

§ 1240. Supp. Cal. Rep. Cit. 140, 621.

§ 1245. Supp. Cal. Rep. Cit. 144, 663.

§ 1246. Supp. Cal. Rep. Cit. 144, 663.

§ 1247. Supp. Cal. Rep. Cit. 144, 663.

§ 1248. Supp. Cal. Rep. Cit. 144, 663; 145, 533.

§ 1249. Supp. Cal. Rep. Cit. 144, 663; 145, 533.

§ 1250. Supp. Cal. Rep. Cit. 144, 663.

§ 1251. Supp. Cal. Rep. Cit. 144, 663.

§ 1252. Supp. Cal. Rep. Cit. 144, 663.

§ 1253. Supp. Cal. Rep. Cit. 144, 663.

§ 1254. Supp. Cal. Rep. Cit. 144, 663.

§ 1255. Supp. Cal. Rep. Cit. 144, 663.

§ 1256. Supp. Cal. Rep. Cit. 144, 663.

§ 1257. Supp. Cal. Rep. Cit. 144, 663.

§ 1258. Supp. Cal. Rep. Cit. 144, 663.

§ 1259. Supp. Cal. Rep. Cit. 144, 663.

§ 1263. Declaration of homestead must contain what.
The declaration of homestead must contain:

1. A statement, showing that the person making it is the head of a family, and, if the claimant is married, the name of the spouse; or, when the declaration is made by the wife, showing that her husband has not made such declaration, and that she therefore makes the declaration for their joint benefit;

2. A statement that the person making it is residing on the premises, and claims them as a homestead;

3. A description of the premises;

4. An estimate of their actual cash value. En. March 21, 1872. Am'd. 1873-4, 231; 1905, 604.

1263. The change consists in the insertion of the words "and if the claimant is married the name of the spouse," after "family."—Code Commissioner's Note.

Supp. Cal. Rep. Cit. Subd. 2—141, 500. Subd. 3—141, 500.

§ 1265. Supp. Cal. Rep. Cit. 139, 72; 139, 151; 144, 147.

DIVISION SECOND.

PART IV.

TITLE V.

CHAPTER IV.

Chapter added March 22, 1905. Stats. 1905, 725.

ALIENATION OF HOMESTEADS OF INSANE PERSONS.

§ 1269a. Petition for sale or mortgage of homestead where husband or wife is insane.

§ 1269b. Notice of application for order.

§ 1269c. When an order may be made to sell or mortgage the homestead of an insane person.

§ 1269a. Petition for sale or mortgage of homestead where husband or wife is insane. In case of a homestead, if either the husband or wife becomes hopelessly insane, the husband or wife not insane may petition the superior court of the county in which such homestead is situated for an order permitting the husband or wife, not insane, to sell and convey, or mortgage, such homestead to raise moneys to satisfy a lien or charge thereon, or to provide for the support and care either of the sane or insane spouse, or of their minor children. Such petition must be subscribed and sworn to by the applicant, setting forth the name and age of the insane husband or wife; the number, age, and sex of the children, if any, of such insane husband or wife; a description of the premises constituting the homestead; the value of the same; the county in which it is situated; and such facts, in addition to that of the insanity of the husband or wife, relating to the circumstances and necessities of the applicant and his or her family, as he or she may rely upon in support of the petition. En. Stats. 1905, 725.

1269a, 1269b, 1269c. The statute of 1873-4, page 582, relating to homesteads belonging to insane persons, is codified in the above sections, which are placed in a new chapter, entitled "Alienation of Homesteads of Insane Persons."—Code Commissioner's Note.

§ 1269b. Notice of application for order. Notice of the application for such order must be given by publication of the same, in a newspaper published in the county in which such homestead is situated, if there is a newspaper published therein, once each week for three successive weeks, prior to the hearing of such application, and a copy of such notice must also be personally served upon the nearest male relative of such insane husband or wife, resident in this state, at least three weeks prior to such application; and in case there is no such male relative known to the applicant, a copy of such notice must be so served upon the public administrator of the county in which such homestead is situated; and in such case it is the duty of such public administrator to appear and represent the interests of such insane person. For all such services rendered by the public administrator he must be allowed a reasonable fee, to be fixed by the court, and the same must be taxed as costs against the person making application for the order herein provided for. En. Stats. 1905, 726.

See note to § 1269a, ante.

§ 1269c. When an order may be made to sell or mortgage the homestead of an insane person. If it appears to the court that such husband or wife is hopelessly insane, the court may make an order permitting the husband or wife, not insane, to sell and convey, or mortgage, such homestead, and thereafter any sale, conveyance, or mortgage made in pursuance of such order is as valid and effectual as if the property affected thereby was the absolute property of the person making such sale, conveyance, or mortgage. If a sale is ordered it must be reported to and confirmed by the court. Such husband or wife must, before executing any mortgage or conveyance, give a bond, to be approved by the judge of the court, in double the amount of the mortgage, or double the value of the property to be sold, conditioned to account for the proceeds of the mortgage or sale and to apply such proceeds only as the court may direct. En. Stats. 1905, 726.

See note to § 1269a, ante.

§ 1270. Supp. Cal. Rep. Cit. 140, 289.

§ 1275. **Who may take property by testamentary disposition.** A testamentary disposition may be made to any person capable by law of taking the property so disposed of, except that corporations other than counties, municipal corporations, and corporations formed for scientific, literary, or solely educational or hospital purposes, cannot take under a will, unless expressly authorized by statute; subject, however, to the provisions of section thirteen hundred and thirteen. En. March 21, 1872. Am'd. 1873-4, 275; 1903, 258; 1905, 605.

1275. The change consists in the insertion of the word "that" before "corporation," and in the insertion of the words "counties, municipal corporations and corporations" after "that." The amendment in substance incorporates into the section the provisions of the act of 1881, page 2, authorizing the several counties, cities and counties, cities and towns, of the state, to receive property by gift, bequest and devise.—Code Commissioner's Note.

§ 1276. **Written will; how to be executed.** Every will, other than a nuncupative will, must be in writing; and every will, other than an olographic will, and a nuncupative will, must be executed and attested as follows:

1. It must be subscribed at the end thereof by the testator himself, or some person in his presence and by his direction must subscribe his name thereto;

2. The subscription must be made in the presence of the attesting witnesses, or be acknowledged by the testator to them to have been made by him or by his authority;

3. The testator must, at the time of subscribing or acknowledging the same, declare to the attesting witnesses that the instrument is his will; and,

4. There must be two attesting witnesses, each of whom must sign the same as a witness, at the end of the will, at the testator's request and in his presence. En. March 21, 1872. Am'd. 1905, 605.

1276. The change consists in the substitution of the words "the same" in place of "his name" after "sign." The purpose of the amendment is to avoid the strict construction given to subdivision 4 in Estate of Walker, 110 Cal. 387.—Code Commissioner's Note.

Supp. Cal. Rep. Cit. 142, 375; 145, 409.

§ 1277. Supp. Cal. Rep. Cit. 145, 83; 145, 409.

§ 1285. Will made out of state not valid in this state, unless. No will made out of this state is valid as a will in this state, unless executed according to the provisions of this chapter, except that a will made in a state or country in which the testator is domiciled at the time of his death, and valid as a will under the laws of such state or country, is valid in this state so far as the same relates to personal property, subject, however, to the provisions of section thirteen hundred and thirteen. En. March 21, 1872. **Am'd.** 1873-4, 232; 1905, 606.

1285. The change consists in the insertion of all the matter after the word "chapter," the purpose being merely to state what has always been understood to be the rule in this state respecting bequests of personal property, viz.: that it may be bequeathed in accordance with the law of the testator's domicile.—Code Commissioner's Note.

§ 1300. Effect of a marriage of a woman on her will. A will, executed by a woman, is revoked by her subsequent marriage, and is not revived by the death of her husband. En. March 21, 1872. **Am'd.** 1905, 606.

1300. The change consists in the omission of the word "unmarried" before "women." The purpose of the amendment is to apply the same rule to wills executed by married and unmarried women with respect to the revocation by subsequent marriage.—Code Commissioner's Note.

§ 1306. Child born after making will, unprovided for, to succeed. Whenever a testator has a child born after the making of his will, either in his lifetime or after his death, and dies leaving such child unprovided for by any settlement, and neither provided for nor in any way mentioned in his will, the child succeeds to the same portion of the testator's real and personal property that he would have succeeded to if the testator had died intestate. But such succession does not impair or affect the validity of any sale of property made by authority of such will in accordance with the provisions of section fifteen hundred and sixty-one of the Code of Civil Procedure. En. March 21, 1872. **Am'd.** 1905, 606.

1306. The change consists in the addition of the last sentence, and is intended to change the rule of *Smith v. Olmstead*, 83 Cal. 582.—Code Commissioner's Note.

Supp. Cal. Rep. Cit. 145, 120.

§ 1307. Children, or issue of children of testator unprovided for by will, to succeed; such succession not to impair validity of sale of property. When any testator omits to provide in his will for any of his children, or for the issue of any deceased child, unless it appears that such omission was intentional, such child, or the issue of such child, has the same share in the estate of the testator as if he had died intestate, and succeeds thereto as provided in the preceding section. But such succession does not impair or affect the validity of any sale of property made by authority of such will in accordance with the provisions of section fifteen hundred and sixty-one of the Code of Civil Procedure. En. March 21, 1872. Am'd. 1905, 606.

1307. The change consists in the addition of the last sentence. (See note to preceding section.)—Code Commissioner's Note.
Supp. Cal. Rep. Cit. 140, 289; 140, 291; 140, 292; 140, 470.

§ 1308. Supp. Cal. Rep. Cit. 140, 292; 145, 121; 145, 122.

§ 1310. On death of legatee, before testator, lineal descendants take estate. When any estate is devised or bequeathed to any child, or other relation of the testator, and the devisee or legatee dies before the testator, leaving lineal descendants, such descendants take the estate so given by the will, in the same manner as the devisee or legatee would have done had he survived the testator. En. March 21, 1872. Am'd. 1905, 150.

1310. The provisions of this section are new, and are limited to cases where a conviction for murder in the first degree has been had.—Code Commissioner's Note.

The code commissioner probably intended this note to be to § 1409. See post, § 1409.

Supp. Cal. Rep. Cit. 139, 89; 140, 289; 140, 290; 140, 291.

§ 1317. Supp. Cal. Rep. Cit. 139, 686; 142, 375.

§ 1318. Supp. Cal. Rep. Cit. 141, 299; 142, 375; 143, 456; 145, 123.

§ 1319. Supp. Cal. Rep. Cit. 139, 89.

§ 1322. Supp. Cal. Rep. Cit. 142, 7.

§ 1324. Supp. Cal. Rep. Cit. 141, 300.

§ 1325. Supp. Cal. Rep. Cit. 142, 375.

§ 1326. Supp. Cal. Rep. Cit. 139, 686; 142, 375; 145, 86.

§ 1327. **Effect of technical words in will.** Technical words in a will are to be taken in their technical sense, unless the context clearly indicates a contrary intention, or unless it satisfactorily appears that the will was drawn solely by the testator, and that he was unacquainted with such technical sense. En. March 21, 1872. Am'd. 1905, 606.

1827. The change consists in the addition of the clause following the word "intention," and provides that the words in a will need not be taken in a technical sense, if it appears to have been drawn by the testator, and that he was unacquainted with such sense.—Code Commissioner's Note.

§ 1330. Supp. Cal. Rep. Cit. 145, 346.

§ 1332. Supp. Cal. Rep. Cit. 142, 7.

§ 1333. Supp. Cal. Rep. Cit. 142, 6; 142, 7.

§ 1338. Supp. Cal. Rep. Cit. 143, 270; 144, 127.

§ 1340. Supp. Cal. Rep. Cit. 142, 374; 142, 376.

§ 1343. Supp. Cal. Rep. Cit. 159, 89; 140, 290.

§ 1350. Supp. Cal. Rep. Cit. 141, 434.

§ 1357. Supp. Cal. Rep. Cit. 145, 121. Subd. 3—143, 453.

§ 1359. Supp. Cal. Rep. Cit. 145, 509.

§ 1360. Supp. Cal. Rep. Cit. 142, 456.

§ 1364. **Heir's conveyance good, unless will is proved within four years.** The rights of a purchaser or incumbrancer of real property, in good faith and for value, derived from any person claiming the same by succession, are not impaired by any devise made by the decedent from whom succession is claimed, unless within four years after the devisor's death, the instrument containing such devise is duly

proved as a will, and recorded in the office of the clerk of the superior court having jurisdiction thereof; or written notice of such devise is filed with the clerk of the county where the real property is situated. En. March 21, 1872. Am'd. 1880, 8; 1905, 606.

1864. The change consists in the transposition of the words "within four years after the deviser's death," by striking them out at the end of the section, where they now appear, and placing them after the word "unless."—Code Commissioner's Note.

§ 1366. Supp. Cal. Rep. Cit. 143, 454.

§ 1368. Supp. Cal. Rep. Cit. 143, 456.

§ 1369. Supp. Cal. Rep. Cit. 143, 454; 143, 456; 143, 457.

§ 1376. **Laws governing validity and interpretation of wills.** The validity and interpretation of wills, wherever made, are governed, when relating to property within this state, by the law of this state, except as provided in section twelve hundred and eighty-five. En. March 21, 1872. Am'd. 1873-4, 235; 1905, 607.

1876. The change consists in the addition of the clause following the word "state," and has been rendered necessary by the proposed amendment to section 1285.—Code Commissioner's Note.

§ 1377. Supp. Cal. Rep. Cit. 140, 289.

§ 1383. Supp. Cal. Rep. Cit. 143, 198.

§ 1384. Supp. Cal. Rep. Cit. 143, 198.

§ 1386. **Succession to and distribution of property of deceased person.** When any person having title to any estate not otherwise limited by marriage contract, dies without disposing thereof by will, it is succeeded to and must be distributed, unless otherwise expressly provided in this code and the Code of Civil Procedure, subject to the payment of his debts, in the following manner:

1. If the decedent leaves a surviving husband or wife, and only one child, or the lawful issue of one child, in equal shares to the surviving husband, or wife and child, or issue of such child. If the decedent leaves a surviving hus-

band or wife, and more than one child living, or one child living and the lawful issue of one or more deceased children, one third to the surviving husband or wife, and the remainder in equal shares to his children and to the lawful issue of any deceased child, by right of representation; but if there is no child of decedent living at his death, the remainder goes to all of his lineal descendants; and if all of the descendants are in the same degree of kindred to the decedent, they share equally, otherwise they take according to the right of representation. If the decedent leaves no surviving husband or wife, but leaves issue, the whole estate goes to such issue; and if such issue consists of more than one child living, or one child living and the lawful issue, of one or more deceased children, then the estate goes in equal shares to the children living, or to the child living and the issue of the deceased child or children by right of representation;

2. If the decedent leaves no issue, the estate goes one half to the surviving husband or wife, and the other half to the decedent's father and mother in equal shares, and if either is dead the whole of said half goes to the other. If there is no father or mother, then one-half goes in equal shares to the brothers and sisters of decedent and to the children or grandchildren of any deceased brother or sister by right of representation. If the decedent leaves no issue, nor husband nor wife, the estate must go to his father and mother in equal shares, or if either is dead then to the other;

3. If there is neither issue, husband, wife, father, nor mother then in equal shares to the brothers and sisters of decedent and to the children or grandchildren of any deceased brother or sister, by right of representation;

4. If the decedent leaves a surviving husband or wife, and neither issue, father, mother, brother, sister, nor the children or grandchildren of a deceased brother or sister, the whole estate goes to the surviving husband or wife;

5. If the decedent leaves neither issue, husband, wife, father, mother, brother, nor sister, the estate must go to the next of kin, in equal degree, excepting that, when there are two or more collateral kindred, in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor must be preferred to those claiming through an ancestor more remote;

6. If the decedent leaves several children, or one child and the issue of one or more children, and any such surviving child dies under age, and not having been married, all the estate that came to the deceased child by inheritance from such decedent descends in equal shares to the other children of the same parent and to the issue of any such other children who are dead, by right of representation;

7. If, at the death of such child, who dies under age, not having been married, all the other children of his parents are also dead, and any of them has left issue, the estate that came to such child by inheritance from his parent descends to the issue of all other children of the same parent; and if all the issue are in the same degree of kindred to the child, they share the estate equally, otherwise they take according to the right of representation;

8. If the decedent is a widow or widower, and leaves no issue, and the estate or any portion thereof was common property of such decedent and his or her deceased spouse, while such spouse was living, or was separate property of his or her deceased spouse, while such spouse was living, such property goes to the children of such deceased spouse and the descendants thereof, and if none, then to the father of such deceased spouse, or if he is dead, to the mother. If there is no father nor mother, then such property goes to the brothers and sisters of such deceased spouse, in equal shares, and to the lawful issue of any deceased brother or sister of such deceased spouse by right of representation;

9. If the decedent leaves no husband, wife, or kindred, and there are no heirs to take his estate or any portion thereof, under subdivision eight of this section, the same escheats to the state for the support of the common schools. En. March 21, 1872. Am'd. 1873-4, 256; 1880, 14; 1905, 607.

1386. A clerical error is corrected by renumbering the subdivisions; certain errors of grammar are corrected. The words "or grandchild" are inserted after "child"; the words "nor the child or grandchild of a deceased brother or sister" are inserted after "sister"; the words "children of such deceased spouse and the descendants thereof, and if none, then to," are inserted. In the second line of subdivision 8, the word "issue" is substituted for "kindred," and the subdivision amended in accordance with the urgent request of Judge Gray of the Supreme Court Commission to overcome such cases as Estate of McCauley, 138 Cal. 546.—Code Commissioner's Note.

Supp. Cal. Rep. Cit. 140, 469; 143, 198; 143, 202; 143, 205. Subd. 9—143, 207. Subd. 10—143, 197.

§ 1387. Supp. Cal. Rep. Cit. 142, 159; 142, 168; 142, 170; 142, 171.

§ 1388. **Property of illegitimate child is succeeded to, when and how.** The estate of an illegitimate child, who has been legitimated by the subsequent marriage of its parents, or adopted by the father as provided by section two hundred and thirty, and who dies intestate, is succeeded to as if he were born in lawful wedlock. If such child has not been so legitimated or adopted, his estate goes to his lawful issue, or, if he leaves no issue, to his mother, or in case of her decease, to her heirs at law. En. March 21, 1872. Am'd. 1905, 609.

1388. The amendment consists in declaring that if an illegitimate child has been legitimated, his estate on his death is succeeded to as if he were born in wedlock.—Code Commissioner's Note.

§ 1395. **Advancements constitute part of distributive share.** Any estate, real or personal, given by the decedent in his lifetime as an advancement to any child, or other heir, is a part of the estate of the decedent for the purposes of division and distribution thereof among his heirs, and must be taken by such child, or other heir, toward his share of the estate of the decedent. En. March 21, 1872. Am'd. 1905, 609.

1395. The change consists in the substitution of the words "other heir" for "other lineal descendants," and in the substitution of "heirs" for "issue."—Code Commissioner's Note.

§ 1399. **When heir advanced to, dies before decedent.** If any child, or other heir receiving advancement, dies before the decedent, leaving heirs, the advancement must be taken into consideration in the division and distribution of the estate, and the amount thereof must be allowed accordingly by the representatives of the heirs receiving the advancement, in like manner as if the advancement had been made directly to them. En. March 21, 1872. Am'd. 1905, 609.

1399. The change consists in the substitution of the words "other heir" for "other lineal descendant" before "receiving," and in the substitution of "heirs" for "issue" after "leaving."—Code Commissioner's Note.

§ 1401. Supp. Cal. Rep. Cit. 143, 295.

§ 1404. Supp. Cal. Rep. Cit. 143, 140.

§ 1405. Succession not claimed, attorney-general to cause to be sold and proceeds deposited with state treasurer. When succession is not claimed as provided in the preceding section, the superior court, on information, must direct the attorney-general to reduce the property to his possession or that of the state, or to cause it to be sold, and it or its proceeds to be deposited in the state treasury for the benefit of the person entitled thereto, to be paid to him, if, within five years after such deposit, he appears in the court in which such information was filed and asks for a judgment or order entitling him thereto. En. March 21, 1872. Am'd. 1905, 609.

1405. The change consists in the substitution of the words "superior court" for "district court" before "or," and in the substitution of the words "he appears in the court in which such information was filed and asks for a judgment or order entitling him thereto," in place of the words "proof to the satisfaction of the state comptroller and treasurer be produced that he is entitled to succession thereto." The design of the amendment is to require the proof of the right to succession to be made in court instead of vesting the controller and treasurer with power to determine the question.—Code Commissioner's Note.

§ 1406. Property, delivered to claimant, when; escheats to the state, when. When such judgment or order is obtained, a certified copy thereof must be filed with the state treasurer as his voucher. Thereupon the property must be delivered, or the proceeds paid, to the claimant, on filing his receipt therefor. If no one succeeds to the estate or the proceeds, as herein provided, the property of the decedent devolves and escheats to the people of the state, and must be placed by the state treasurer to the credit of the school fund. En. March 21, 1872. Am'd. 1905, 610.

1406. This section is recast to conform to the proposed amendment to the last section.—Code Commissioner's Note.

§ 1409. Person convicted of murder of decedent not to succeed. No person who has been convicted of the murder of the decedent shall be entitled to succeed to any portion of his estate; but the portion thereof to which he would otherwise be entitled to succeed descends to the other persons entitled thereto under the provisions of this title. En. Stats. 1905, 610.

1409. This is a new section corresponding to section 1314.—Code Commissioner's Note.

See note to § 1310, ante.

§ 1412. Supp. Cal. Rep. Cit. 138, 721; 138, 722.

§ 1431. Supp. Cal. Rep. Cit. 140, 537.

§ 1440. Supp. Cal. Rep. Cit. 144, 401.

§ 1442. Supp. Cal. Rep. Cit. 145, 184.

§ 1458. Supp. Cal. Rep. Cit. 144, 260.

§ 1459. Supp. Cal. Rep. Cit. 144, 35.

§ 1468. **Transfer of obligations; covenants to run with land.** A covenant made by the owner of land with the owner of other land to do or refrain from doing some act on his own land, which doing or refraining is expressed to be for the benefit of the land of the covenantee, and which is made by the covenantor expressly for his assigns or to the assigns of the covenantee, runs with both of such parcels of land. En. Stats. 1905, 610.

1468. This is a new section, and is designed to remove any doubt that covenants of the kind mentioned therein run with the land.—Code Commissioner's Note.

§ 1479. Supp. Cal. Rep. Cit. 145, 34. Subd. 1—144, 782.
Subd. 3—141, 338.

§ 1488. Supp. Cal. Rep. Cit. 141, 316.

§ 1489. Supp. Cal. Rep. Cit. 141, 316.

§ 1500. Supp. Cal. Rep. Cit. 141, 712; 141, 713.

§ 1504. Supp. Cal. Rep. Cit. 143, 667; 143, 670.

§ 1511. Supp. Cal. Rep. Cit. Subd. 3—144, 401.

§ 1521. Supp. Cal. Rep. Cit. 142, 41.

§ 1522. Supp. Cal. Rep. Cit. 142, 41.

- § 1523. Supp. Cal. Rep. Cit. 142, 41.
- § 1531. Supp. Cal. Rep. Cit. Subd. 2—143, 7.
- § 1543. Supp. Cal. Rep. Cit. 145, 533.
- § 1550. Supp. Cal. Rep. Cit. 139, 512; 145, 498.
- § 1559. Supp. Cal. Rep. Cit. 142, 708.
- § 1565. Supp. Cal. Rep. Cit. 139, 512; 140, 162.
- § 1567. Supp. Cal. Rep. Cit. 141, 62.
- § 1568. Supp. Cal. Rep. Cit. 138, 671; 145, 448.
- § 1572. Supp. Cal. Rep. Cit. 141, 62; 144, 312. Subd. 3—138, 671. Subd. 4—133, 671; 141, 390. Subd. 5—138, 671.
- § 1575. Supp. Cal. Rep. Cit. 141, 62.
- § 1577. Supp. Cal. Rep. Cit. 138, 671. Subd. 1—144, 110.
- § 1578. Supp. Cal. Rep. Cit. Subd. 2—138, 671.
- § 1581. Supp. Cal. Rep. Cit. 140, 162.
- § 1584. Supp. Cal. Rep. Cit. 141, 706.
- § 1585. Supp. Cal. Rep. Cit. 140, 161; 145, 625.
- § 1589. Supp. Cal. Rep. Cit. 141, 706; 144, 112.
- § 1605. Supp. Cal. Rep. Cit. 139, 168; 145, 500.
- § 1614. Supp. Cal. Rep. Cit. 143, 533.
- § 1615. Supp. Cal. Rep. Cit. 143, 533.
- § 1624. **Contracts, what must be written.** The following contracts are invalid, unless the same, or some note or

memorandum thereof, is in writing and subscribed by the party to be charged, or by his agent:

1. An agreement that by its terms is not to be performed within a year from the making thereof;

2. A special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in section twenty-seven hundred and ninety-four;

3. An agreement made upon consideration of marriage other than a mutual promise to marry;

4. An agreement for the sale of goods, chattels, or things in action, at a price not less than two hundred dollars, unless the buyer accepts or receives part of such goods and chattels or the evidences, or some of them, of such things in action, or pays at the time some part of the purchase money; but when a sale is made at auction, an entry by the auctioneer in his sale book, at the time of the sale, of the kind of property sold, the terms of the sale, the price, and the names of the purchaser and person on whose account the sale is made, is a sufficient memorandum;

5. An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent is in writing, subscribed by the party sought to be charged;

6. An agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation or a commission;

7. An agreement which by its terms is not to be performed during the lifetime of the promisor, or an agreement to devise or bequeath any property, or to make any provision for any person by will. En. March 21, 1872. Am'd. 1873-4, 241; 1877-8, 86; 1905, 611.

1624. The change consists in the addition of subdivision 7. The cases in which it is sought to establish by parol evidence alleged agreements to provide for a person by will are becoming so numerous as to warrant the assumption that the reasons inducing the original enactment of the statute of frauds apply with especial force to agreements of this class and that they ought to be brought within that statute.—Code Commissioner's Note.

Supp. Cal. Rep. Cit. 142, 403. Subd. 1—140, 689. Subd. 5—143, 366. Subd. 6—141, 111.

§ 1625. **Effect of written contracts.** The execution of a contract in writing, whether the law requires it to be written or not, supersedes all the negotiations or stipulations concerning its matter which preceded or accompanied the execution of the instrument. En. March 21, 1872. Am'd. 1905, 611.

1625. The change consists in the omission of the word "oral" before "negotiations."—Code Commissioner's Note.

Supp. Cal. Rep. Cit. 141, 228; 141, 734.

§ 1636. Supp. Cal. Rep. Cit. 141, 102; 141, 731.

§ 1637. Supp. Cal. Rep. Cit. 141, 102.

§ 1638. Supp. Cal. Rep. Cit. 141, 228; 141, 734.

§ 1639. Supp. Cal. Rep. Cit. 141, 228; 141, 734.

§ 1642. Supp. Cal. Rep. Cit. 142, 144.

§ 1643. Supp. Cal. Rep. Cit. 141, 102; 144, 37.

§ 1644. Supp. Cal. Rep. Cit. 144, 37.

§ 1645. Supp. Cal. Rep. Cit. 144, 37.

§ 1646. Supp. Cal. Rep. Cit. 141, 735.

§ 1647. Supp. Cal. Rep. Cit. 141, 261; 141, 731.

§ 1648. Supp. Cal. Rep. Cit. 141, 731.

§ 1653. Supp. Cal. Rep. Cit. 141, 731.

§ 1654. Supp. Cal. Rep. Cit. 141, 102; 141, 454.

§ 1657. Supp. Cal. Rep. Cit. 143, 366.

§ 1659. Supp. Cal. Rep. Cit. 140, 537.

§ 1670. Supp. Cal. Rep. Cit. 144, 499.

§ 1671. Supp. Cal. Rep. Cit. 144, 499; 144, 500.

- § 1673. Supp. Cal. Rep. Cit. 145, 387.
 - § 1674. Supp. Cal. Rep. Cit. 145, 387.
 - § 1689. Supp. Cal. Rep. Cit. Subd. 2—138, 672.
 - § 1691. Supp. Cal. Rep. Cit. Subd. 1—142, 320.
 - § 1698. Supp. Cal. Rep. Cit. 140, 62.
 - § 1741. Supp. Cal. Rep. Cit. 140, 159; 142, 156.
 - § 1764. Supp. Cal. Rep. Cit. 139, 584; 145, 280.
 - § 1766. Supp. Cal. Rep. Cit. 145, 278.
 - § 1771. Supp. Cal. Rep. Cit. 145, 280.
 - § 1774. Supp. Cal. Rep. Cit. 139, 585.
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DIVISION THIRD.

PART IV.

TITLE III.

CHAPTER II.

CHAPTER [ARTICLE] IIIa.

Article added March 21, 1905. Stats. 1905, 612.

WAREHOUSEMEN.

- § 1858. Warehouse receipts, when must not be issued.
- § 1858a. Property not to be removed without consent in writing.
- § 1858b. Warehouse receipts, classification and effect of.
- § 1858c. Indorsement on negotiable receipt of property delivered.

§ 1858d. Negotiable receipts and their effect.

§ 1858e. Liability for loss by fire.

§ 1858f. Penalties and liabilities.

§ 1858. Warehouse receipts, when must not be issued. A warehouseman, wharfinger, or other person doing a storage business must not issue any receipt or voucher for any merchandise, grain, or other product or thing of value, to any person purporting to be the owner thereof, nor to any person as security for any indebtedness or for the performance of any obligation, unless such merchandise, grain, or other product, commodity, or thing has been, in good faith, received by such warehouseman, wharfinger, or other person, and is in his store or under his control at the time of issuing his receipt; nor must any second receipt for any such property be issued while a former receipt for any part thereof is outstanding and uncanceled. En. Stats. 1905, 612.

1858, 1858a, 1858b, 1858c, 1858d, 1858e, 1858f. The statute of 1877-8, page 949, relating to warehousemen's and wharfmasters' receipts, is codified in the above sections.—Code Commissioner's Note.

§ 1858a. Property not to be removed without consent in writing. No warehouseman, wharfinger, or other person must sell or incumber, ship, transfer, or remove beyond his immediate control any property for which a receipt has been given, without the consent in writing of the person holding such receipt plainly indorsed thereon in ink. En. Stats. 1905, 612.

See note to § 1858, ante.

§ 1858b. Warehouse receipts, classification and effect of. Warehouse receipts for property stored are of two classes: first, transferable or negotiable; and second, non-transferable or non-negotiable. Under the first of these classes the property is transferable by indorsement of the party to whose order such receipt was issued, and such indorsement is a valid transfer of the property represented by the receipt, and may be in blank or to the order of another. All warehouse receipts must distinctly state on their face for what they are issued and its brands and distinguishing marks and the rate of storage per month or season, and, in the case of grain, the kind, the number of sacks, and pounds. If a receipt is not negotiable, it must have printed across its face, in red

ink, in bold, distinct letters, the word "non-negotiable." En. Stats. 1905, 612.

See note to § 1858, ante.

§ 1858c. Indorsement on negotiable receipt of property delivered. If a negotiable receipt is issued for any property, neither the person issuing it nor any other person into whose care or control the property comes must deliver any part thereof without indorsing on the back of the receipt, in ink, the amount and date of the delivery; nor can he be allowed to make any offset, claim, or demand other than is expressed on the face of the receipt, when called upon to deliver any property for which it was issued. En. Stats. 1905, 612.

See note to § 1858, ante.

§ 1858d. Negotiable receipts and their effect. If a non-negotiable receipt is issued for any property, neither the person issuing nor any other person in whose care or control the property comes must deliver any part thereof, except upon the written order of the person to whom the receipt was issued. En. Stats. 1905, 612.

See note to § 1858, ante.

§ 1858e. Liability for loss by fire. No warehouseman or other person doing a general storage business is responsible for any loss or damage to property by fire while in his custody, if he exercises reasonable care and diligence for its protection and preservation. En. Stats. 1905, 613.

See note to § 1858, ante.

§ 1858f. Penalties and liabilities. Every warehouseman, wharfinger, or other person who violates any of the provisions of sections eighteen hundred and fifty-eight to eighteen hundred and fifty-eight e, inclusive, is guilty of a felony, and, upon conviction thereof, may be fined in a sum not exceeding five thousand dollars, or imprisoned in the state prison not exceeding five years, or both. He is also liable to any person aggrieved by such violation for all damages, immediate or consequent, which he may have sustained therefrom, which damages may be recovered by a civil action in any court of competent jurisdiction, whether the offender has been convicted or not. En. Stats. 1905, 613.

See note to § 1858, ante.

§ 1865. Finder of goods or money, or saving animals, duty of. If the finder of a thing, other than a domestic animal, takes possession thereof, or if a person saves any such animal from drowning or starvation, he must, within a reasonable time, inform the owner thereof, if known, and make restitution to him upon demand, without compensation, except a reasonable charge for saving and caring therefor. If the owner is not known to such finder or saver, he must, within five days, file an affidavit with the justice of the peace of the county whose office is nearest to the place of such finding or saving, particularly describing the property and the time, place, and circumstances under which it was found or saved. Such justice must then summon three disinterested persons to appraise the property. They, or a majority of them, must make two lists of the valuation and description of the property, by them verified, and deliver one of such lists to the justice of the peace, to be kept by him on file in his office, and the other list must be delivered to such finder or saver, who must, within five days thereafter, cause it to be filed for record in the office of the county recorder of the county, who must record it in a book known as the "Estray and Lost Property Book." En. March 21, 1872. Am'd. 1905, 613.

1865. The section is amended to incorporate therein the provisions, upon the same subject, of sections 3136, 3137, and 3138 of the Political Code.—Code Commissioner's Note.

§ 1871. Property vests in finder, when; publication in certain cases; liability of finder to owner. If no owner appears within six months after such finding or saving and offers reasonable proof of his ownership, and compensates, or in good faith offers to compensate, the finder or saver for the expense necessarily incurred by him, then such property vests in such finder or saver, unless it is of greater value than twenty dollars. If of such greater value, he must publish a copy of such verified list for three successive weeks in some newspaper of general circulation published in the county, and if the owner does not, within one year after the completion of such publication, prove the property and pay, or in good faith offer to pay, all charges thereon, the title thereto vests in such finder or saver. If the finder or saver of property does not comply with the provisions of section eighteen hundred and sixty-five, or if, though he does so comply, he refuses to surrender the prop-

erty to an owner who has made reasonable proof of ownership, and paid, or in good faith offered to pay, all legal charges thereon, he is liable to the owner for double the value of the property, and the owner may exonerate himself from all liability arising out of such property by surrendering, or offering to surrender, it in satisfaction thereof. En. March 21, 1872. Am'd. 1905, 614.

1871. The section is amended to incorporate therein the provisions of sections 8189, 8140, and 8141 of the Political Code.—Code Commissioner's Note.

§ 1917. Supp. Cal. Rep. Cit. 143, 527.

§ 1929. **Hirer to repair injuries.** The hirer of a thing must repair all deteriorations or injuries thereto occasioned by his want of ordinary care. En. March 21, 1872. Am'd. 1905, 614.

1929. The change consists in the substitution of the words "want of ordinary care" for "ordinary negligence."—Code Commissioner's Note.

§ 1930. **Thing let for a particular purpose.** When a thing is let for a particular purpose the hirer must not use it for any other purpose; and if he does, he is liable to the letter for all damages resulting from such use, or the letter may treat the contract as thereby rescinded. En. March 21, 1872. Am'd. 1905, 614.

1930. The change consists in the substitution of the words "he is liable to the letter for all damages resulting from such use, or the letter" in place of the words "the letter who is responsible for its safety during such use in all events, or."—Code Commissioner's Note.

§ 1932. **Hirer may terminate the hiring, when.** The hirer of a thing may terminate the hiring before the end of the term agreed upon:

1. When the letter does not, within a reasonable time after request, fulfill his obligations, if any, as to placing and securing the hirer in the quiet possession of the thing hired, or putting it into good condition, or repairing; or,

2. When the greater part of the thing hired, or that part which was and which the letter had at the time of the hiring reason to believe was the material inducement to the hirer to enter into the contract, perishes from any other cause

than the want of ordinary care of the hirer. En. March 21, 1872. **Am'd.** 1905, 614.

1932. The change consists in the substitution of the words "want of ordinary care" for "ordinary negligence."—Code Commissioner's Note.

§ 1970. Supp. Cal. Rep. Cit. 142, 255.

§ 1980. Supp. Cal. Rep. Cit. 139, 81; 139, 84.

§ 2012. Supp. Cal. Rep. Cit. 145, 267.

§ 2161. **Obligation of carrier of messages.** A carrier of messages for reward, other than by telegraph or telephone, must deliver them at the place to which they are addressed, or to the person for whom they are intended. Such carrier, by telegraph or telephone, must deliver them at such place and to such person, *provided*, the place of address, or the person for whom they are intended, is within a distance of two miles from the main office of the carrier in the city or town to which the messages are transmitted, and the carrier is not required, in making the delivery, to pay on his route toll or ferriage; but for any distance beyond one mile from such office, compensation may be charged for a messenger employed by the carrier. En. March 21, 1872. **Am'd.** 1873-4, 248; 1905, 627.

2161. The change consists in the insertion of the words "or telephone" after "telegraph" in two places, thus making the section applicable to both telegraph and telephone companies.—Code Commissioner's Note.

§ 2180. **Common carriers of persons, obligation to carry baggage.** A common carrier of persons, unless his vehicle is fitted for the reception of persons exclusively, must receive and carry a reasonable amount of baggage for each passenger without charge, except for an excess of weight over one hundred pounds to a passenger; if such carrier is a proprietor of a stage line, he need not receive and carry for each passenger by such stage line, without charge, more than sixty pounds of baggage. En. March 21, 1872. **Am'd.** 1877-8, 87; 1905, 615.

2180. The change consists in the substitution of the word "need" for "may." The present section would seem to prohibit

a carrier by stage from receiving more than sixty pounds of luggage, wherein it was manifestly intended only to relieve him, at his election, from receiving a greater amount.—Code Commissioner's Note.

§ 2186. Supp. Cal. Rep. Cit. 141, 732.

§ 2188. Supp. Cal. Rep. Cit. 141, 732; 145, 452.

§ 2195. **Liability of common carrier of property.** A common carrier is liable, even in the cases excepted by the last section, if his want of ordinary care exposes the property to the cause of the loss. En. March 21, 1872. Am'd. 1905, 615.

2195. The change consists in the substitution of the words "want of ordinary care" for "ordinary negligence."—Code Commissioner's Note.

§ 2215. Supp. Cal. Rep. Cit. Subd. 1—138, 609.

§ 2219. Supp. Cal. Rep. Cit. 141, 61; 142, 69.

§ 2221. Supp. Cal. Rep. Cit. 144, 318.

§ 2224. Supp. Cal. Rep. Cit. 141, 60; 141, 62; 142, 69; 144, 312.

§ 2228. Supp. Cal. Rep. Cit. 142, 641; 144, 606.

§ 2229. Supp. Cal. Rep. Cit. 145, 364.

§ 2230. Supp. Cal. Rep. Cit. 144, 606; 145, 363; 145, 365.

§ 2231. Supp. Cal. Rep. Cit. 142, 69; 142, 641.

§ 2234. Supp. Cal. Rep. Cit. 145, 363.

§ 2235. Supp. Cal. Rep. Cit. 142, 69.

§ 2236. **Obligations of trustees.** A trustee who willfully and unnecessarily mingles the trust property with his own, so as to constitute himself in appearance its absolute owner, is liable for its safety in all events, and for the value of its use. En. March 21, 1872. Am'd. 1905, 615.

2236. The change consists in the addition of the words "and for the value of its use" after "events."—Code Commissioner's Note.

- § 2239. Supp. Cal. Rep. Cit. 142, 641.
- § 2250. Supp. Cal. Rep. Cit. 144, 125; 145, 649.
- § 2252. Supp. Cal. Rep. Cit. 142, 16.
- § 2258. Supp. Cal. Rep. Cit. 142, 16.
- § 2267. Supp. Cal. Rep. Cit. 139, 594.
- § 2273. Supp. Cal. Rep. Cit. 145, 649.
- § 2295. Supp. Cal. Rep. Cit. 140, 630.
- § 2299. Supp. Cal. Rep. Cit. 139, 594.
- § 2300. Supp. Cal. Rep. Cit. 139, 594; 143, 504; 144, 350.
- § 2307. Supp. Cal. Rep. Cit. 141, 311; 143, 504.
- § 2309. Supp. Cal. Rep. Cit. 141, 311; 142, 403; 143, 366.
- § 2310. Supp. Cal. Rep. Cit. 141, 311; 142, 403; 143, 366.
- § 2311. Supp. Cal. Rep. Cit. 144, 112.
- § 2316. Supp. Cal. Rep. Cit. 141, 705.
- § 2317. Supp. Cal. Rep. Cit. 141, 705; 143, 504.
- § 2322. Supp. Cal. Rep. Cit. 145, 363. Subd. 3—142, 641.
- § 2330. Supp. Cal. Rep. Cit. 139, 594; 141, 705.
- § 2332. Supp. Cal. Rep. Cit. 141, 705.
- § 2334. **Principal bound by acts of agent.** A principal is bound by acts of his agent, under a merely ostensible authority, to those persons only who have in good faith, and without want of ordinary care, incurred a liability or parted with value, upon the faith thereof. En. March 21, 1872. Am'd. 1905, 616.

2334. The change consists in the substitution of the words "want of ordinary care" for "ordinary negligence."—Code Commissioner's Note.

Supp. Cal. Rep. Cit. 143, 504.

§ 2514. Supp. Cal. Rep. Cit. 144, 773.

§ 2541. Insurance of mortgaged property; effect of acts performed by mortgagee for mortgagor. Where a mortgagor of property effects insurance in his own name, providing that the loss shall be payable to the mortgagee, or assigns a policy of insurance to the mortgagee, the insurance is deemed to be upon the interest of the mortgagor, who does not cease to be a party to the original contract, and any act of his which would otherwise avoid the insurance will have the same effect, although the property is in the hands of the mortgagee, but any act which, under the contract of insurance, is to be performed by the mortgagor, may be performed by the mortgagee, with the same effect as if it had been performed by the mortgagor. En. March 21, 1872. Am'd. 1905, 616.

2541. The change consists in the addition of the clause following "mortgagee," and is designed to authorize a mortgagee in whose favor insurance is effected, to perform for the mortgagor any acts to be performed by him, with the same effect as if performed by the mortgagor.—Code Commissioner's Note.

§ 2611. Supp. Cal. Rep. Cit. 143, 291.

§ 2814. Supp. Cal. Rep. Cit. 138, 729; 141, 677.

§ 2815. Supp. Cal. Rep. Cit. 141, 676.

§ 2819. Supp. Cal. Rep. Cit. 139, 418; 145, 244.

§ 2822. Supp. Cal. Rep. Cit. 145, 499.

§ 2831. Supp. Cal. Rep. Cit. 139, 253; 139, 254; 139, 255; 145, 499.

§ 2832. Supp. Cal. Rep. Cit. 139, 418; 145, 498.

§ 2837. Supp. Cal. Rep. Cit. 138, 730.

§ 2839. Supp. Cal. Rep. Cit. 139, 418.

§ 2840. Supp. Cal. Rep. Cit. 139, 418; 145, 244. Subd. 2—144, 96.

§ 2844. Supp. Cal. Rep. Cit. 141, 677; 145, 244.

§ 2848. Supp. Cal. Rep. Cit. 139, 49; 145, 499.

§ 2849. Supp. Cal. Rep. Cit. 139, 49; 139, 50; 139, 52.

§ 2899. Supp. Cal. Rep. Cit. 139, 352; 139, 361; 141, 12; 142, 557.

§ 2903. **Lien, right to redeem from.** Every person, having an interest in property subject to a lien, has a right to redeem it from the lien, at any time after the claim is due, and before his right of redemption is foreclosed, and, by such redemption, becomes subrogated to all the benefits of the lien, as against all owners of other interests in the property, except in so far as he was bound to make such redemption for their benefit. En. March 21, 1872. Am'd. 1905, 617.

2903. The change consists in the addition of the clause after the word "foreclosed." The design of the amendment is to state and apply the rule of equity in such cases, it being feared that the declaration of a similar rule in section 2904, and its omission in this section might lead to doubt. Code Commissioner's Note.

§ 2910. Supp. Cal. Rep. Cit. 142, 542; 142, 543.

§ 2911. Supp. Cal. Rep. Cit. 140, 20; 140, 21; 142, 475; 142, 480; 144, 361; 144, 577; 144, 578.

§ 2913. **Lien when restoration extinguishes.** The voluntary restoration of property to its owner by the holder of a lien thereon dependent upon possession extinguishes the lien as to such property, unless otherwise agreed by the parties, and extinguishes it, notwithstanding any such agreement, as to creditors of the owner and persons, subsequently acquiring a title to the property, or a lien thereon, in good faith, and for value. En. March 21, 1872. Amd. 1873-4, 260; 1905, 617.

2913. The change consists in the substitution of the word "value" for "a good consideration," after "for."—Code Commissioner's note.

§ 2922. Supp. Cal. Rep. Cit. 140, 689; 144, 783.

§ 2924. Supp. Cal. Rep. Cit. 144, 783.

§ 2925. Supp. Cal. Rep. Cit. 144, 132.

§ 2930. Supp. Cal. Rep. Cit. 138, 683; 144, 146.

§ 2931. Supp. Cal. Rep. Cit. 144, 333.

§ 2933. Supp. Cal. Rep. Cit. 144, 35.

§ 2950. Supp. Cal. Rep. Cit. 144, 132.

§ 2955. **Chattel mortgages.** Mortgages may be made upon the following personal property and none other:

1. Locomotives, engines and other rolling stock of a railroad.

2. Steamboat machinery, the machinery used by machinists, foundrymen, and mechanics.

3. Steam engines and boilers.

4. Mining machinery.

5. Printing presses and material.

6. Professional libraries.

7. Instruments of surveyors, physicians and dentists.

8. Upholstery, furniture and household goods.

9. Oil paintings, pictures and works of art.

10. All growing crops, including grapes and fruit.

11. Vessels of more than five tons burden.

12. Instruments, negatives, furniture and fixtures of a photograph gallery.

13. The machinery, casks, pipes, tubes and utensils used in the manufacture or storage of wine, fruit brandy, fruit syrup or sugar; also wines, fruit brandy, fruit syrup, or sugar, with the cooperage in which the same are contained.

14. Pianos and organs.

15. Iron and steel safes.

16. Cattle, horses, mules, swine, sheep, goats and turkeys and the increase thereof.

17. Harvesters, threshing outfits, hay presses, wagons, farming implements, and the equipments of a livery stable, including buggies, carriages, harness, robes.

18. Abstract systems, books, maps, papers, and slips of searchers of records.

19. Raisins and dried fruits, cured or in process of being cured. Also all boxes, fruit graders, drying trays and fruit ladders.

20. Bees and bee-hives, apiaries and apiary stock, including frames, combs and extractors, also honey at apiaries.

21. Machinery, tanks, stills, agitators, leachers, and apparatus used in producing and refining petroleum, asphaltum, fuel oils, lubricating oils and greases.

22. The bedroom furniture, carpets, tables, stoves, ranges, cooking utensils and all furniture and equipments usually found in a hotel. En. March 21, 1872. Am'd. 1875-6, 79; 1877-8, 88; 1887, 5; 1893, 84; 1895, 57; 1897, 95; 1903, 78; 1905, 36.

§ 2957. Supp. Cal. Rep. Cit. Subd. 2—143, 6.

§ 2972. Supp. Cal. Rep. Cit. 142, 544.

§ 2973. **Mortgages on personal property, validity of certain.** Mortgages of personal property, other than that mentioned in section twenty-nine hundred and fifty-five, and mortgages not made in conformity with the provisions of this article, are nevertheless valid between the parties, their heirs, legatees, and personal representatives, and persons who, before parting with value, have actual notice thereof. En. Stats. 1905, 617.

2973. This section merely declares the law already existing upon the subject. It is deemed proper to have the same expressed in the Code.—Code Commissioner's Note.

§ 2986. Supp. Cal. Rep. Cit. 144, 633.

§ 2987. Supp. Cal. Rep. Cit. 144, 633.

§ 3000. Supp. Cal. Rep. Cit. 144, 333.

§ 3049. Supp. Cal. Rep. Cit. 143, 438.

§ 3061. **Lien of workmen on threshing machines, etc.** Every person performing work or labor in, with, about, or upon any barley crusher, threshing machine or engine, horsepower, wagon, or other appliance thereof, while engaged in crushing or threshing, has a lien thereon to the extent of the value of his services. Such lien extends for ten days after

any such person ceases such work or labor; *provided*, within that time, an action is brought to recover the amount of the claim. If judgment is given in favor of the plaintiff in any such action, and it is further found that he is entitled to a lien under the provisions of this section, property subject thereto, or so much thereof as may be necessary, may be sold to satisfy such judgment; but if several judgments have been recovered against the same property for the enforcement of such liens, the proceeds of the sale must be divided *pro rata* among the judgment creditors. En. Stats. 1905, 618.

3061. The statute of 1885, page 109, concerning liens in favor of persons working on threshing machines, is codified in this section.—Code Commissioner's Note.

§ 3062. Lien of person in charge of stallion, etc. Every owner or person having in charge any stallion, jack, or bull, used for propagating purposes, has a lien for the agreed price of its service upon any mare or cow and upon the offspring of such service, unless some willfully false representation concerning the breeding or pedigree of such stallion, jack, or bull has been made or published by the owner or person in charge thereof, or by some other person, at the request or instigation of such owner or person in charge. En. Stats. 1905, 618.

3062, 3063, 3064. The statute of 1891, page 90, is codified in the above sections.—Code Commissioner's Note.

§ 3063. Claimant of lien must file verified claim; such claim a notice to subsequent purchasers. Every claimant of a lien provided for in the preceding section must, within ninety days after the service on account of which the lien is claimed, file in the office of the county recorder of the county where the mare or cow subject thereto is kept, a verified claim containing a particular description of the mare or cow, the date and place of service, the name of the owner or reputed owner of such mare or cow, a description by name, or otherwise, of the stallion, jack, or bull performing the service, the name of the owner or person in charge thereof, and the amount of the lien claimed. Such claim, so filed, is notice to subsequent purchasers and incumbrancers of such mare or cow and of the offspring of such service for one year after such filing. En. Stats. 1905, 613.

See note to § 3062, ante.

§ 3064. Action to enforce lien. An action to enforce any lien created under section thirty hundred and sixty-two may be brought in any county wherein any of the property subject thereto may be found, and the plaintiff is entitled to the remedies provided in sections thirty hundred and forty-four and thirty hundred and sixty-five upon complying with such sections, both of which are hereby made applicable to the proceedings in such action. En. Stats. 1905, 619.

See note to § 3062, ante.

§ 3065. Lien of person who labors at cutting, etc., logs, lumber, etc. A person who labors at cutting, hauling, rafting or drawing logs, bolts, or other timber, has a lien thereon for the amount due for his personal services, which takes precedence of all other claims, to continue for thirty days after the logs, bolts, or other timber arrive at the place of destination for sale or manufacture, while such logs, bolts, or other timber are in the county in which such labor was performed. The lien hereby created ceases and determines unless the claimant thereof, within twenty days from the time such labor is completed, brings suit to foreclose the same. The plaintiff in any such suit, at the time of issuing the summons or at any time afterwards, may have the logs, bolts, or other timber upon which such lien subsists attached, as provided in this code, upon delivering to the clerk an affidavit by or on behalf of the plaintiff, showing that defendant is indebted to the plaintiff upon a demand for labor performed, either in the cutting, hauling, rafting, or drawing such logs, bolts, or other timber, and that the sum for which the attachment is asked is an actual bona fide existing debt, due and owing from the defendant to the plaintiff, and that the attachment is not sought, and the action is not brought, to hinder, delay, or defraud any creditor or creditors of the defendant. En. Stats. 1905, 619.

3065. So much of the statute of 1877-8, page 747, as amended in 1880, page 38, and 1887, page 53, relating to loggers' liens, as is deemed necessary to be preserved, is codified in the above section.—Code Commissioner's Note.

§ 3088. Negotiable instrument payable in money only. A negotiable instrument must be made payable in money only and without any condition not certain of fulfillment, except that it may provide for the payment of attorney's fees and

costs of suit, in case suit be brought thereon to compel the payment thereof. En. March 21, 1872. Am'd. 1905, 96.

§ 3094. Supp. Cal. Rep. Cit. 145, 84.

§ 3104. Supp. Cal. Rep. Cit. 139, 667.

§ 3113. Supp. Cal. Rep. Cit. 139, 580.

§ 3115. Supp. Cal. Rep. Cit. 139, 580.

§ 3116. Supp. Cal. Rep. Cit. 139, 574; 139, 580; 139, 584.

§ 3131. **Negotiable instrument, presentment for payment, how made.** Presentment of a negotiable instrument for payment, when necessary, must be made as follows, as nearly as by reasonable diligence it is practicable:

1. The instrument must be presented by the holder, or his agent;

2. The instrument must be presented to the principal debtor, if he can be found at the place where presentment should be made; and if not, then it must be presented to some other person having charge thereof, or employed therein, if one can be found there;

3. An instrument which specifies a place for its payment must be presented there; and if the place specified includes more than one house, then at the place of residence, or business, of the principal debtor, if it can be found therein;

4. An instrument which does not specify a place for its payment must be presented at the place of residence, or business, of the principal debtor, or wherever he may be found, at the option of the presenter;

5. The instrument must be presented upon the day of its maturity, or, if it is payable on demand, it may be presented upon any day. It must be presented within reasonable hours; and if it is payable at a banking house, within the usual banking hours of the vicinity, but, by the consent of the person to whom it should be presented, it may be presented at any hour of the day;

6. If the principal debtor has no place of business, or if his place of business, or residence, cannot, with reasonable diligence, be ascertained, presentment for payment is excused. En. March 21, 1872. Am'd. 1873-4, 263; 1905, 620.

8181. The change consists in the insertion of the words "or his agent" after "holder." The design of the amendment is to conform the section in this respect to section 3186.—Code Commissioner's Note.

§ 3176. Bills of exchange, where payable. A bill of exchange is payable:

1. At the place where, by its terms, it is made payable.
2. If it specifies no place of payment, then at the place to which it is addressed.
3. If it is not addressed to any place, then at the place of residence or business of the drawee, or wherever he may be found. If the drawee has no place of business, or if his place of business or residence cannot, with reasonable diligence, be ascertained, presentment for payment is excused, and the bill may be protested for nonpayment. En. March 21, 1872. Am'd. 1873-4, 264; 1905, 620.

8176. The change consists in the insertion of the word "cannot" after "residence," to correct a manifest error.—Code Commissioner's Note.

§ 3197. Bills of exchange, promise to accept, effect of. An unconditional promise in writing, to accept a bill of exchange, is a sufficient acceptance thereof, in favor of every person who upon the faith thereof has taken the bill for value. En. March 21, 1872. Am'd. 1905, 621.

8197. The change consists in the omission of the words "or other good consideration," as they occur after "value." The presence of these words implies that a consideration other than "for value" may support a promise in writing to accept a bill. Such is not intended to be the law.—Code Commissioner's Note.

§ 3235. Foreign bills of exchange, rate of damages. Damages are allowed under the last section upon bills drawn upon any person:

1. If drawn upon a person in this state, two dollars upon each one hundred dollars of the principal sum specified in the bill;
2. If drawn upon a person out of this state, five dollars upon each one hundred dollars of the principal sum specified in the bill;
3. If drawn upon a person in any place in a foreign country, fifteen dollars upon each one hundred dollars of the principal sum specified in the bill. En. March 21, 1872. Am'd. 1905, 621.

3235. The change consists in the substitution of the word "a" for "any" before "person"; in the omission of the words "but in any of the other states west of the Rocky Mountains" after "state"; in the omission of the third subdivision; and in the renumbering of the fourth subdivision rendered necessary thereby. As it now stands the section divides for its purposes that part of the United States not included within this state, into two parts, viz.: the states west, and the states east, of the Rocky Mountains, thus apparently ignoring the states now existing situated partly on each side of those mountains. It has seemed best to abolish the distinction altogether and to provide a uniform rate of damage for all the states, irrespective of their position with reference to those mountains.—Code Commissioner's Note.

§ 3287. Supp. Cal. Rep. Cit. 141, 697.

§ 3294. **Exemplary damages, in what cases allowed.** In an action for the breach of an obligation not arising from contract, where the defendant has been guilty of oppression, fraud, or malice, express or implied, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant. En. March 21, 1872. Am'd. 1905, 621.

3294. The change consists in the substitution of the words "express or implied" for "actual or presumed," and in the substitution of the words "the plaintiff, in addition to the actual damages, may recover," in place of the words "the jurors, in addition to actual damages, may give." As the section now stands it appears to apply to jury trials only. This, of course, was not the intention of the legislature.—Code Commissioner's Note.

Supp. Cal. Rep. Cit. 139, 518; 139, 521; 140, 363; 140, 364; 142, 260; 142, 261.

§ 3300. Supp. Cal. Rep. Cit. 140, 342.

§ 3301. Supp. Cal. Rep. Cit. 140, 342.

§ 3311. Supp. Cal. Rep. Cit. Subd. 1—143, 438. Subd. 2—144, 84.

§ 3333. Supp. Cal. Rep. Cit. 139, 518; 139, 521; 141, 613.

§ 3346. Supp. Cal. Rep. Cit. 139, 560.

§ 3346a. **Damages for firing woods.** Every person negligently setting fire to his own woods, or negligently suffering

any fire to extend beyond his own land, is liable in treble damages to the party injured. En. Stats. 1905, 621.

3346a. The new section incorporates into this Code the principle now declared in section 3344 of the Political Code.—Code Commissioner's Note.

§ 3353. Supp. Cal. Rep. Cit. 140, 652.

§ 3360. Supp. Cal. Rep. Cit. 139, 520.

§ 3366. Specific relief, etc., when allowed. Specific or preventive relief may be given as provided by the laws of this state. En. March 21, 1872. Am'd. 1905, 622.

3366. The change consists in the substitution of the words "as provided by the laws of this state," in place of the words "in the cases specified in this title and in no others." The purpose is to enlarge the scope of the section.—Code Commissioner's Note.

Supp. Cal. Rep. Cit. 139, 474.

§ 3367. Supp. Cal. Rep. Cit. Subd. 2—142, 46.

§ 3369. Supp. Cal. Rep. Cit. 138, 665.

§ 3386. Supp. Cal. Rep. Cit. 142, 346; 144, 533.

§ 3390. Supp. Cal. Rep. Cit. Subd. 1—140, 497.

§ 3391. Supp. Cal. Rep. Cit. Subd. 2—142, 467; 144, 535.

§ 3399. Supp. Cal. Rep. Cit.. 144, 454.

§ 3406. Supp. Cal. Rep. Cit. 141, 63. Subd. 1—138, 672.

§ 3423. Supp. Cal. Rep. Cit. Subd. 2—139, 474; 139, 475; 159, 476; 139, 478.

§ 3432. Supp. Cal. Rep. Cit. 139, 366; 140, 399.

§ 3433. Supp. Cal. Rep. Cit. 159, 352; 139, 361; 141, 12.

§ 3440. Supp. Cal. Rep. Cit. 143, 283.

§ 3442. Supp. Cal. Rep. Cit. 140, 619; 140, 620; 140, 623; 141, 627; 144, 711; 145, 226.

§ 3449. Supp. Cal. Rep. Cit. 139, 367; 144, 513; 144, 516.

§ 3451. **Assignments for benefit of creditors, certain transfers not affected.** The provisions of this title do not prevent a person residing in another state or country from making there, in good faith, and without intent to evade the laws of this state, a transfer of property situated within it; but such person cannot make a general assignment of property situated in this state for the satisfaction of all his creditors, except as in this title provided; nor do the provisions of this title affect the power of a person, although insolvent, and whether residing within or without this state, to transfer property in this state, in good faith to a particular creditor, or creditors, or to some other person or persons in trust for such particular creditor or creditors for the purpose of paying or securing the whole or part of a debt owing to such creditor or creditors, whether in his or their own right or otherwise. En. March 21, 1872. Am'd. 1889, 82; 1905, 622.

3451. The change consists in the insertion of the words "or creditors or to some other person or persons in trust for such particular creditor or creditors," after "creditor." The rule stated in the section as amended by the addition of the clause above quoted is the rule heretofore enforced in this state (Lawrence v. Neff, 41 Cal. 566; Hendley v. Pfister, 39 Cal. 283; Priest v. Brown, 100 Cal. 626); but some doubt has been cast upon the subject by the later case of Sabachi v. Chase, 108 Cal. 81.—Code Commissioner's Note.

Supp. Cal. Rep. Cit. 139, 366.

§ 3458. Supp. Cal. Rep. Cit. 144, 515.

§ 3459. Supp. Cal. Rep. Cit. 144, 515.

§ 3468. Supp. Cal. Rep. Cit. 144, 517.

§ 3473. Supp. Cal. Rep. Cit. 139, 367.

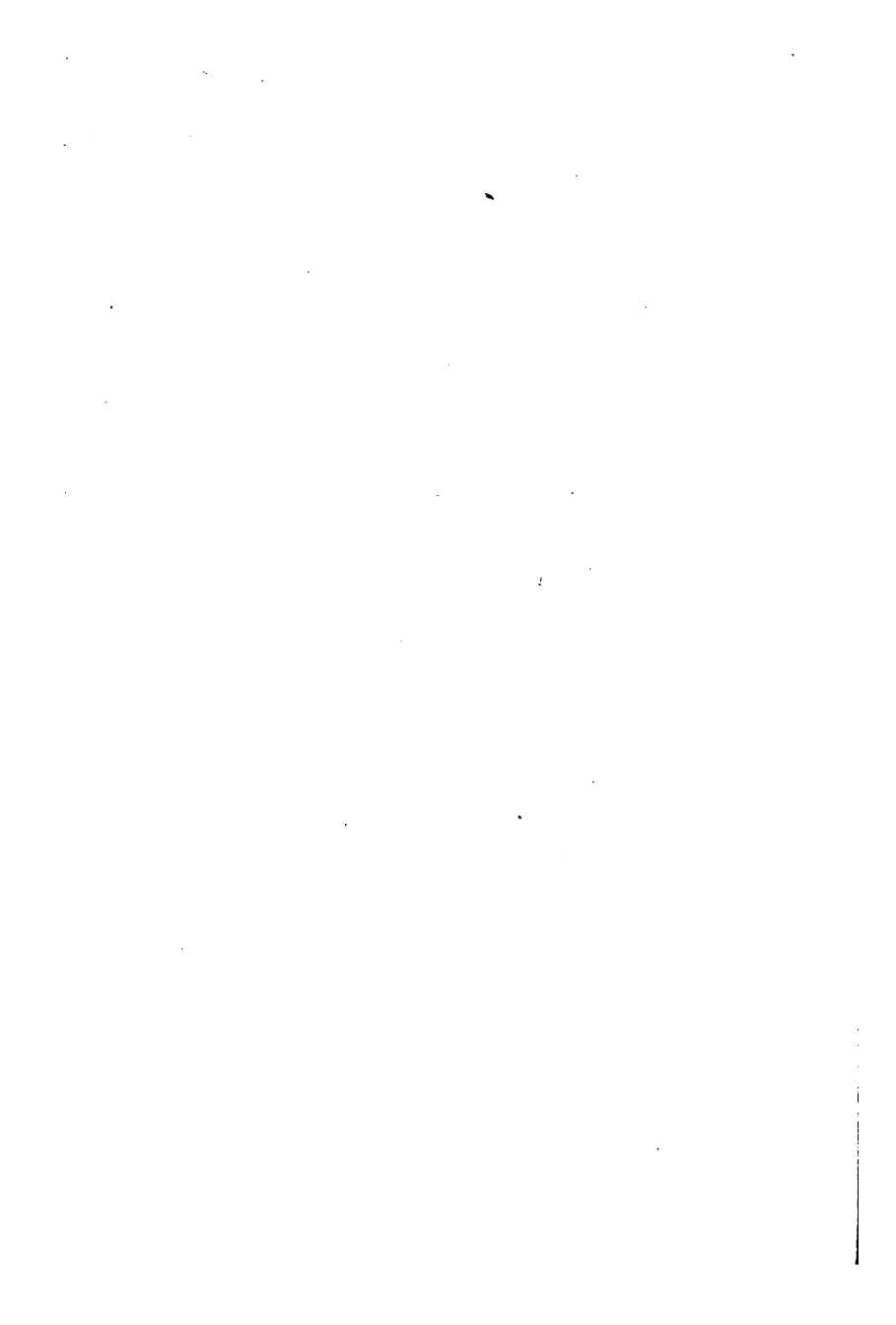
§ 3479. Supp. Cal. Rep. Cit. 144, 136.

§ 3493. Supp. Cal. Rep. Cit. 141, 363; 144, 139.

§ 3510. Supp. Cal. Rep. Cit. 141, 123.

§ 3513. Supp. Cal. Rep. Cit. 144, 655.

- § 3515. Supp. Cal. Rep. Cit. 143, 504.
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